*Uniform with this volume:*

# QUESTIONS AND ANSWERS

## I

### THE SACRAMENTS

# QUESTIONS AND ANSWERS

## II

## PRECEPTS

*Being answers to questions on the Divine and Natural Lan', the Laws of the Church, regulations for Clerics and Religious, and the externals of Worship, in so far as they are covered by the Canon Law and the Decrees of the Sacred Congregations*

*by*

Canon E. J. MAHONEY, D.D.

LONDON
BURNS OATES & WASHBOURNE LTD.
PUBLISHERS TO THE HOLY SEE

nihil obstat: reginaldvs g. Phillips, s.t.l.
**CENSOR DEPVTATVS**
**IMPRIMATVR: E. MORROGH BERNARD**
vicarivs generalis
westmonasterii: die **xn** febrvarti mcmxlix

Fw/ *published* . 1949
*Second impression* 1955

**MADE AND PRINTED IN GHEAT BRITAIN BY**
**THE ANCHOR PRESS LTD., TIPTREE, ESSEX**
**FOR BURNS OATES AND WASHBOURNE'**
**UMITED, 28 ASHLEY PLACE, LONDON S W I**

# FOREWORD

The first volume of *Questions and Answers,* published in 1946, consisted of material explanatory of the sacraments printed in *The Clergy Review* from 1951 to 1944. This one contains classified and corrected replies on matters other than the sacraments, and it covers my contributions to the *Review* from 1931 to 1947. For the convenience of readers who have both volumes, a Code index and an alphabetical index of both have been compiled, and the numbering of questions is continued from the first volume.

My thanks are due to the clergy who have pressed for this second series, and to the proprietors and editor of the *Review for* their kind assistance.

E. J. Mahoney.

*Poles, Ware, Herts,*

*zyth June,* 1948.

# ABBREVIATIONS

*A.A.S.* = *Acta Apostolicae Sedis.* Commentarium Officiale. (Romae, Typis Polyglottis Vaticanis.)

*Addit, et Variat.* = The section at the beginning of the current *Missale Romanum* entitled "Additiones et Variationes in Rubricis Missalis."

*Apollinaris* = *Apollinaris,* Commentarium luris Canonici. (Romae, Pontificium Institutum Utriusque luris, Piazza S. Apollinare, 49.)

Bouscaren, *Digest* = *The Canon L,aw Digest.* Officially Published Documents Affecting the Code of Canon Law. Vol. I (1934); Vol. II (1943). By T. Lincoln Bouscaren, S.J. (Bruce Publishing Company, Milwaukee, U.S.A.)

*Caerem. Epp.* = *Caeremoniale Episcoporum,* Clementis VIII, Innocentii X et Benedicti XIII Jussu Editum, Benedicti XIV et Leonis XIII Auctoritate Recognitum. (Marietti, 1955.)

*Clementine Instruction* = *Instructio Clementina* pro Expositione SSmi Sacramenti Occasione XL Horarum (1731). It is printed with annotations in Vol. IV of *Decreta Authentica* S.R.C. English translation by Rev. J. O'Connell. (Burns Oates & Washbourne, 1927.)

Code = *Codex luris Canonici,* Pii X Pontificis Maximi lussu Digestus, Benedicti Papac XV Auctoritate Promulgatus. (Romae, Typis Polyglottis Vaticanis, 1918.)

*Code Commission* = Pontificia Commissio ad Codicis Canones Authentice Interpretandos.

*Collât. Brugen.* = *Collationes Brugenses,* Auctoritate Exc. et Rev. Episcopi Brugensis edita. (Seminarium Episcopale, Bruges.)

*De Defectibus* = The section at the beginning of the current *Missale Romanum* entitled "De Defectibus in Celebratione Missarum Occurrentibus".

Denz. = Enchiridion Symbolorum Definitionum et Declarationum De Rebus Fidei et Morum. Auctore Henrico Denzingcr. (Herder.)

*Diet. Droit. Canon.* = *Dictionnaire de Droit Canonique.* (Paris, Letouzey et Ané, 1924 seq.)

*Diet. Théol.* = *Dictionnaire de Théologie Catholique.* (Paris, Letouzey et Ané, 1909 scq.)

*E.T.L..* = *Ephemerides Theologicae Lovanienses.* (18 Rue des Rccollets, Louvain.)

*Fontes* = *Codicis luris Canonici Fontes.* Vols. I-VIII. (Romae, Typis Polyglottis Vaticanis, 1926-1939.)

*Jus Pontificium* = *Jus Pontificium* seu Ephemerides Romanae ad Canonicas Disciplinas Spectantes. (Romae, Via Monteselva 3.)

*N.K.S.* = *Nederlandsche Katholieke Stemmen.* (Zwolle, J.M.W., Flanders.)

*Ordo Administrandi* — *Ordo Administrandi Sacramenta* et Alia Quaedam Officia Peragendi ex Rituali Romano Extractus Nonnullis Adiectis ex Antiquo Rituali Anglicano. (Burns Oates and Washbourne, 1915.)

*Periodica* = *Periodica de Re Morali Canonica Uturgica* Fundata ab Arthuro Vcrmeersch, S.J., Edita a Professoribus Pontificiae Universitatis Gregorianac. (Romae, Universitas Gregoriana.)

*Preces et Pia Opera* = *Preces et Pia Opera* in Favorem Omnium Christifidelium vel Quorundam Coetuum Personarum Indulgentiis Ditata ct Opportune Recognita. (Romae, Typis Polyglottis Vaticanis, 1938.) There is an English translation (Burns Oates and Washbourne) of the previous 1929 edition, entitled *The Raccolta.* The translation of the current 1938 edition, also entitled *The Raccolta,* is published by Bcnziger, New York.

*Propaganda* — Sacra Congregatio de Propaganda Fide.

*Q.L.P.* = *Questions Liturgiques et Paroissiales.* (Abbaye du Mont César, Louvain.)

*Rit. Ce/ebr. Miss.* — The section at the beginning of the current *Missale Romanum,* entitled "Ritus Servandus in Celebratione Missae".

*Rituale Romanum* = *Rituale Romanum* Pauli V Pontificis Maximi Jussu Editum Aliorumque Pontificum Cura Recognitum atque Auctoritate D.N.Pii Papac XI ad Normam Codicis Juris Canonici Accomodatum. (Romae, Desckc, 193j.)

*Ritus Servandus* — *Ritus Servandus* in Solemni Expositione et Benedictione Sanctissimi Sacramenti. (Burns Oates and Washbournc, 1938.)

*Rubricae Generales* = The section at the beginning of the current *Missale Romanum,* entitled "Rubricae Generales Missalis".

*S.C. Cone.* = Sacra Congregatio Concilii.

*S.C. Consist.* = Sacra Congregatio Consistorialis.

*S.C. Indulg.* : Sacra Congregatio Indulgentiis Sacrisque Reliquiis Praepositа

*S.C. Relig.* = Sacra Congregatio de Religiosis.

*S.C. Sacram.* — Sacra Congregatio de Disciplina Sacramentorum.

*S. Off.* = Suprema Sacra Congregatio Sancti Officii.

*S. Poenit.* = Sacra Pocnitcntiaria Apostolica.

*S.R.C.* Sacra Congregatio Sacrorum Rituum. The numeral refers to the *Decreta Authentica* of the Congregation, Vols. I-VI. (Romac, Typis Polyglottis Vaticanis, 1898-1927.)

*Sylloge* = *Sylloge* Praecipuorum Documentorum Recentium Summorum Pontificum et S. Congregationis de Propaganda Fide nccnon Aliarum SS. Congregationum Romanarum. Ad Usum Missionariorum. (Romae, Typis Polyglottis Vaticanis, 1939.)

*Theol. Moralis* — Manual of Moral Theology variously entitled *Compendium Institutiones, Summula,* or *Manuale.*

*Westm.* = *Decreta Quatuor Conciliorum Provincialium Westmonasteriensium* 1852-1873. (Burns and Oates, n.d.) English translation entitled *The Synods in English.* By Rev. Robert E. Guy, O.S.B. (Stratford-on-Avon, 1886.)

# TABLE OF CONTENTS


PAG!

Foreword 5

Abbreviations 7

## I. DIVINE AND NATURAL LAW

QUBST1ON

§i. Faith

359. Rights of Error 19
360. Religious Liberty—A Papal Text 20
361. Baptism of Children of Infidels 21
362. Leakage Precautions 23
363. Women in the Services 24
364. Freemasons 25
565. Ceasing to be a Catholic 26
366. Non-Catholic Education 28
367. Non-Catholic Schools 29
368. Children in Non-Catholic Schools 31
369. Origins of the Catechism 31
370. Confraternity of Christian Doctrine 33
371. Pagan Rites 34
372. The Index and Oriental Catholics 36

§2. Communicatio in Sacris

373. Principles and Terms 37
374. United Worship: Common Ground 39
375. United Prayers 4°
376. United Prayers: A Milder View 41
377. Border-line Cases 42
378. Radio Sermons 43
379. Ministration of Schismatic Priest 43
380. Assistance of Non-Catholics at our Functions 44
381. Private Prayer in Pre-Reformation Churches 46
382. Oath on a Protestant Bible 47
383. Co-operation with Non-Catholics 48

§3. The Vth Commandment

384. Assurance of Death J®
385. Caesarean Section on Dead Mother 51
386. Indirect Abortion 51
387. Therapeutic Abortion 53
388. Co-operation in Abortion 55
389. English Law on Abortion 56
390. Self-Mutilation 57
391. Sterilization 58
392. Castration of Choristers 59

# CONTENTS


| question | | PAGE |
|---|---|---|
| §4' ^393. | Conditions for a Just War. | |
| 394. | Early Church and War . | 64 |
| 195 | The Just War Theory | 66 |
| 396. | War and the Unjust Aggressor | 66 |
| 397. | Military Objectives . | 67 |
| 398. | Reprisals . | 69 |
| 399. | The Atomic Bomb . | 7° |
| 400. | Military Service. | |
| 401. | Conscientious Objectors | |
| §5. The VIth Commandment | | |
| 402. | The Ends of Marriage | 73 |
| 403. | Sterility and Marriage | |
| 404. | Artificial Insemination | |
| 405. | Definition of Sexual Pleasure | 77 |
| 406. | Parvitas Materiae | |
| 407. | V.D. Prophylactics . | 79 |
| 408. | De Linteamine Hygienico . | 82 |
| 409. | Immodest Dress | 82 |
| 410. | Vesture (Deuteronomy xxii, 5) | 84 |
| 411. | Dancing | 85 |
| 412. | Parental Sex Instruction | |
| 413. | Divorce Co-operation | 88 |
| §6. Contraception | | |
| 414. | Contraception and Marriage Consent | 9° |
| 415. | Co-operating in Contraception . | 9 |
| 416. | De Lotione Vaginali . | 93 |
| 417. | Sale of Contraceptives | 94 |
| 418. | Contraception and Good Faith . | 96 |
| 419. | Confessional Interrogations | 98 |
| 420. | Incompetent Confessor | 99 |
| 421. | Counselling a Lesser Evil | 100 |
| 422. | Safe Period | IOI |
| 425. | Safe Period Propaganda | 102 |
| §7. Justice | | |
| 424. | Defamation | 106 |
| 42j. | Self-defamation . | 106 |
| 426. | Title by Accession | 108 |
| 427. | Occult Compensation | 109 |
| 428. | Grave Matter in Theft | no |
| 429. | Railway Frauds | |
| 430. | Restitution for Petty Thefts | |
| 431· | Restitution to the Poor | |
| 43 | Animals' Rights | |

# CONTENTS

## IL LAWS OF THE CHURCH


§i. Principles

455. Interpretation of Laws . . . . . .115
454. Diocesan Law . . . . . n6
455. "Audito Capitulo" .....117
436. Custom and Superior's Consent . . . . .118
457. Conflicting Laws . . . . . .119
438. Numerical Distinction of Laws — — — — — 120
439. Children under Seven — — — — — — 121
440. Computation of Time . . . . . .122
441. Domicile and Quasi-domicile . . . . 123
442. Domicile of Soldiers and Minors . . . .124
443. Privilege . . . . . .126
444. Deficiencies of the Code . . . . . 127
445. Congregation of Rites . . . . . .128

§2. Jurisdiction and Faculties

446. Ordinary Jurisdiction of Parish Priest. . . .128
447. Parochial Jurisdiction in Military Camps . . .130
448. Jurisdiction Supplied in Doubt . . . . 131
449. Jurisdiction Supplied in Common Error . . .131
450. Delegated Jurisdiction . . . . . 133
451. Delegated jurisdiction Ceasing — — — — — 134
452. Territorial Limits . . . . . 135
453. Faculties During War . . . . . .156
454. Faculties of Pious Associations Withdrawn . . 137
455. Missionary Union Faculties . . . . . 138

§3. Penalties

456. Conditions for Incurring Censure . . . .140
457. Censures Reserved to Ordinaries . . . .141
458. Reconciliation in Danger of Death — — — — 145
459. Reserved Case of Abortion . . . . .144
460. Marriage in Protestant Church . . . . .145
461. Penalty for Civil Marriage . . . . .146
462. Irregularity before Age of Puberty . . . .147
463. Theatre Suspension . . . . . M7
464. Confirmation: Privation Penalty . . . . .149

§4. Sunday Observance

465. Mass in Semi-public Oratory . . . . .150
466. Mass in Ship's Oratory . . . . . .151
467. Servile Work: Profit Motive . . . . .152
468. Permitted Servile Work . . . . . .155
469. Is Knitting Servile Work? . . . . .157
470. Sunday Amusements . . . . . .158

# CONTENTS

QUBTnON PAGE

Fasting and Abstinence

5 471. Fasting Too Strictly Interpreted. 159
472. Chief Meal . . . 164
473. Refections . . . 165
474. z\bstinence: Condiments 166
475. Abstinence: Water Fowl . 168
476. Ordinary Dispensing Abstinence. 169
477. Parish Priest Dispensing Abstinence
478. Curate Dispensing Abstinence .
479. Excuse or Dispensation .

§6. Unclassified
480. Legitimacy . . 173
481. Westminster Version .
482. Inscription in Confraternities
483. Judgement of Tribunal

## III. CLERICS

§i. Bishops and Ordinaries
484. Discussing a Future Pope . 177
485. "Sede Vacante" 178
486. Episcopal Throne 179
487. Episcopal Ring 180
488. Meaning of Ordinary 181
489. Faculties of Ordinaries 182
490. Episcopal Consecration
491. The Ordinary and Parochial Rights 184
492. Proper Ordinary 185
493. Ordinary's Death: Jurisdiction Ceasin 186
494. Election of Vicar-Capitular
495. Two Vicars-General . 187
496. Vicar-General of Military Ordinary 188
497· Incardination by Tonsure . 189
498. Dispensation from Insterstices T91
499· Agc f°r the Priesthood 192
500. Exeat T92

ξζ. Clerical Obligations
501. Canonical Obedience . T93
502. Episcopal Mass Precept '95
503. Retreats — — — — '95
504. Obligation of the Rosary 196
505. Clergy Examinations . 197
506. "Scribere" in Canon 1386, §1 198
507. Canon's Robes . 200
J08. Capitular Low Mass 201
509. Honorary Canons 202
510. Priest Factory Workers 203

question
§2, Clerical Obligations—*continued*
511. Clerical Dress
512. The "Rabat" of the French Clergy
513. Housekeepers
514. Eleven O'Clock Rule
515. Bearded Clerics
516. Clamorous Hunting
517. The Censure of Canon 2388, §1
518. Oath taken by a Priest
519. Prayer for the Clergy

§3. Parish Priests
520. Parochial Mass
521. Preaching and Catechizing
522. Frequency of Missions
523. Necessity of Installation
524. Form of Installation
525. Cathedral Parochial Rights
526. Precedence of Parish Priest
527. Missionary Quasi-Parochus
528. Division of a Parish
529. Curé d'Ars

§4. Benefices and Revenues
530. Support of Pastors
531. Benefices without Endowment
j32. Benefice: Superfluity
533. Benefice Constituted by Otfcrings
534. Benefices Reserved to the Holy See
535. Occult Simony
536. Stole Fees
537. Church Dances
538. Diocesan Collections
539. Box Monies
540. Cathedraticum
541. Salary of "Vicarius Oeconomus"
542. Remuneration of Visiting Priest
543. Out-door Collections

## IV. RELIGIOUS

§1. POSTULANCY AND PROFESSION
544. Advertising for Vocations
545- Admission into Novitiate
546. Examination before Profession
547· Religious Profession
548. Refused Renewal of Profession
549. Seminarist entering Religion
550. Non-Catholic Religious Vows

FAGB

U Religious Rights and Duties

551. Duration of Superior's Office . 247
552. Dimissorial Letters . . 249
553. Religious and their Correspondence 249
554. Political Directions of Superior . 25I
555. Papal Enclosure . 252
556. Confessions of Religious . 253
557. Ordinary Confessor . 254
558. Maternity Nursing . 255
559. Calendar for Religious 256
560. Mass in Dominican Chapel 257
561. Communication of Privileges 258
562. Religious with Leave of Absence 259
565. Ex-Missionary Priest's Employment 260
564. "Episcopus Benevolens" 261
565. Religious Societies without Vows 261
566. Local Law and Regular Houses 263

V. WORSHIP

§1. Liturgical Worship

567. Definition of Liturgical Worship . . . .265
568. Vernacular in the Liturgy — — — — — — 266
569. Public Prayers during Mass — — — — — 268
570. "Gratiarum Actio post Missam" — — — — 270
571. Air Raids: Liturgical Prayers . . . . .271
572. Incensation — — — — — — — — 275
573. Instrumental Music..... 274
574. "Benedictio Mulieris Praegnantis" . . . .275
575. St George: Patron or Protector? — — — — 276

§2. Divine Office

576. Choir Obligation . . . . 277
577. Hour for Anticipating Choral Matins 278
578. Hour for Anticipating Private Matins 280
579. Induit for Anticipating Matins . 281
580. Anticipating Litanies . 282
581. Second Nocturn Lessons . . 282
582. Pater Noster "Secreto" 283
585. Confiteor in Divine Office 284
584. Antiphon B.V.M. 284
585. Titular in "A Cunctis" 285
586. Abrogated Suffrages . 286
587. Office of Titular 287
588. Form of Office 287
589. Office during Retreat 289
590. Travellers and Divine Office 289
591. Choice of Office

PAGE

Kz. Divine Office—*continued*
592. Breviary Lacking — — — — 292
593. Office Morally Impossible . 294
594. Office in the Vernacular 294
595. Rosary for Office — — — — 295
596. Wireless and Liturgical Offices . 296
597. Exposition and Office of the Dead 297

§3. Holy Week
598. Ceremonies of "Memoriale Rituum" . 298
599. Induit for using "Memoriale Rituum" 298
600. Palm Sunday Procession 300
601. Passion: Dispensation Tax 501
602. Reservation during Triduum 302
603. Holy Thursday Mass: One Chalice 304
604. Mass of the Presanctified . 304

§4. Our Lady
605. Feasts B.V.M. — — — — — 306
606. "Our" Lord is with Thee 307
607. Litany of Loreto — — — — 308
608. The Rosary — — — — — 310
609. May Devotions — — — — 312
610. Dedication of Infants to Our Lady 3'2
611. Devout Female Sex — — — — 3[illegible]

§5. Funerals
612. Funeral Rites — — — — — 3[illegible]
613. Abridged Funeral Rite 3D
614. Exequial Office on Sunday
615. Exequies of Deceased Clergy 518
616. Burial of a Priest — — — — 518
617. Funeral of Catechumens 320
618. Blessing of Infant's Grave 320
619. Ecclesiastical Burial of Non-Catholics 321
620. Graves of Non-Catholics . 522
621. Burial in Non-Catholic Cemetery 323
622. Municipal Cemeteries 324
623. Unbaptized Infants — — — — 325
624. Cremation — — — — — 526
625. Preservation of Deceased Person's Heart 327

§6. Textual Difficulties
626. Sign of the Cross — — — — 328
627. "Sicut erat in Principio" . 328
628. Te Deum — — — — — — 329
629. Canon of the Mass — — — — 329
630. The Pater Noster "Amen" 33°
631. Sung Passion according to St Mark . 330
632. Requiem Introit — — — — 331

# CONTENTS


PAGE

^Textual Difficulties—*continued*

633. "Pro Patre et Matre 332
634. The Nuptial Blessing 332
635. Asperges "Miserere" . 334
656. Confirmation by a Priest . „ 334
657. "Dominus Meus et Deus Meus" 335
658. "Triplex Machina" . . „ 53<>
639. "Benedictio Habitus Clericalis" 538
640. Ordo Administrandi . 339
641. "Fidelium Deus" 340
642. "En Ego" 341
643. Prayer Terminations . 341

§7. Devotions

644. New Devotions — — — — 342
645. Corpus Christi Triduum . 343
646. Hymns during Exposition . 344
647. Representations of Christ and the Saints 345
648. Sabbatine Privilege — — — — 345
649. Blessed Ashes — — — — — 347
650. Blessing of Roses — — — — 349
651. Agnus Dei — — — — — 350

## VI. SACRED THINGS

§1. Altars

6j2. Erection and Change of Altars 351
653. Position of High Altar 351
654. Fixed Altar Stone
655. Defective Altar Stone 553
656. Gradines — — — — 354
657. Structure of Privileged Altar
658. Altar of Titular 356

§2. Tabernacle and Throne

659. Construction of Tabernacle 357
660. Fixture of Tabernacle 358
661. Tabernacle Key 359
662. Safe Custody of Blessed Sacrament 560
665. Position of Tabernacle 561
664. Interior of Tabernacle 362
665. Tabernacle Conopaeum 362
666. Colour of Conopaeum 364
667. Exposition Throne . 365
668. Exposition Thabor 366

§3. Altar Furniture

669. The Altar Cross
670. Position of Altar Cross ' 367
671. Cross during Benediction ' 369

| qubshon | | FAG1 |
|---|---|---|
| §3. Altar Furniture—*continued* | | |
| *G-jz.* | Blessing of Akar Crucifix . | . 370 |
| 675. | Relics — — — — — | . 371 |
| 674. | Altar Linen — — — — | . 37[illegible] |
| 675. | Black Akar Frontal . | . 372 |
| 676. | Akar Charts — — — — | • 373 |
| 677. | Petitions on the Altar | • 373 |
| 678. | Flowers — — — — — | • 374 |
| §4. Churches | | |
| 679. | Minor Basilicas — — — — | . 375 |
| 680. | Consecration: Freedom from Debt | . 377 |
| 681. | Consecration with no Akar | . 377 |
| 682. | Reconciliation of Bombed Church | . 578 |
| 685. | Consecration Crosses | . 379 |
| 684. | Parish Mall in Church Basement | . 580 |
| 685. | Titular: Parish Church and Chapel | 381 |
| 686. | Institution Hall | 382 |
| 687. | Private House — — — — | 505 |
| 688. | Secular Functions in Churches . | 584 |
| §5. Statues | | |
| 689. | Statues in Churches . | . 385 |
| 690. | Our Lady and St Joseph . | . 386 |
| 691. | Our Lady of Czestochowa | . 388 |
| 692. | Similar Statues in Churches | • 589 |
| 695. | Statue of a "Beatus" | • 39° |
| 694. | Statue on the Tabernacle | . 59° |
| §6. Sacred Vessels | | |
| 695. | Construction of Chalice | • 391 |
| 696. | Desecration of Chalice | • 592 |
| 697. | The Ciborium — — — — | • 395 |
| 698. | Ciborium Veil — — — — | • 395 |
| 699. | The Monstrance | • 396 |
| 700. | Touching Sacred Vessels . | • 397 |
| 701. | Sale of Blessed Objects | • 599 |
| §7. Vestments | | |
| 702. | Vestments requiring Blessing | • 399 |
| 703. | Blessing Vestments . | . 400 |
| 704. | Gothic Vestments | . 401 |
| 705. | Rose-coloured Vestments . | . 403 |
| 706. | Double Vestments | • 404 |
| 707. | Folded Chasubles | . 405 |
| 708. | Preaching Stole | . 406 |
| 709. | Marriage Rite: Vestments . | • 407 |
| 710. | Removing the Maniple | . 408 |
| 711. | Ornamented Albs | . 409 |
| 712. | Gloves . | • 409 |
| 713. | Vestments in Pageants | . 410 |

QUMT10
FAC·

§8. Church Furniture
714. Baptismal Font — — — — 4IO
715. Location of Baptistery . 4”
716. Mission Cross: Ordinary’s Consent . 4II
717. Ambo and Pulpit • 4I3
718. Mass Bell — — — — • 4M
719. Sanctuary Carpet • 4I5
720. National Flag in Sanctuary . 416
721. Sacrarium..... • 4Π
722. Monuments — — — — . 4I8
723. Tombs in Churches . . 4I8

§9. Candles and Lighting
724. Electric Lighting: Roman Instruction • 4I9
725. Electric Light within Throne . 420
726. Candles — — — — — . 42I
727. Paschal Candle — — — — • 423
728. Sanctus Candle — — — — • 423
729. Low Mass Candles . • 424
730. Candles on Side Altars • 425
731. St Blaise Candles . 426
732. Requiem Mass Candles • 427

Code Index ..... . 428

Alphabetical Index . • 432

# I. DIVINE AND NATURAL LAW

## §1. FAITH

### 359.—Rights of Error

*Granted that a man has an obligation to follow the dictate of an invincibly erroneous conscience, does it notfollow that he has the moral right to do so?*

The conclusion does not follow, because "right", "jus", is created by law, but obligation is ultimately dependent on the individual conscience appreciating the law; "right" is necessarily based on the objective truth, but "obligation" may arise from a subjective error, as is the case when a man's conscience is invincibly erroneous. This is the common doctrine as formulated in the two following extracts:

Bouquillon, *Theologia Moralis,* §276: "Conscientia invincibiliter erronea non est regula operationum simpliciter et absolute legitima, est tamen legitima per accidens et secundum quid. Non est legitima simpliciter et absolute, quia discordat a iure quod applicari debet, vel non congruit facto cui ius applicatur; legitima est per accidens et secundum quid, quia, propter erroris invincibilitatem, defectus conformitatis cum iure vel congruitatis cum facto non imputatur . . . Itaque fas est conscientiam invincibiliter erroneam sequi; non tamen inest homini ius eam sequendi, et quamvis puniri non possit qui eam secutus est, potest tamen qui ea laborat, a legitima auctoritate impediri ne eam sequatur."

*Theologia . . . Mechliniensis,* De Conscientia, p. 31: (re-states the above doctrine) ". . . Attamen non habet ius illam sequendi et impediri potest nc eam sequatur, quia ius ad faciendum malum est contradictio in adiecto."

Thus, a man may think that he is bound to commit perjury in the witness-box to save a friend: if his conscience is invincibly erroneous he is bound to commit perjury. But it cannot be said that he has the right to do so, and the appropriate authority should prevent him giving evidence if his state of mind is known.

*Have not all non-Catholics in good faith the right to spread their views and publicly worship God as they think good andproper?*

A Catholic must hold that there is only one true religion which every man is bound to profess, and the notion, therefore, that freedom publicly to worship God as one pleases is a fundamental human and moral right is more than false: it is madness—*deliramentum*—as Pius IX, following Gregory XVI, emphatically asserts.[1]

In what sense, then, may non-Catholic religious bodies rightly claim freedom to propagate their beliefs, and worship God publicly according to their conscience? The classical Catholic answer is in terms of *thesis* and *hypothesis,* the thesis being as just stated, and the hypothesis that heterodox forms of worship must, in given conditions, all be equally tolerated. This may seem to non-Catholics an arrogant explanation, but it is the only logical

[1] Denz., 1615, 1690.

answer consistent with the truth that the Church alone is the repository of the one true religion, and we think that ultimately no good purpose will be served by sublimating it. Our non-Catholic neighbours are in the utmost good faith and are entitled to learn from us with the utmost candour what the Catholic position is.

### 360.—Religious Liberty—A Papal Text

*Does not the text of "Mât Brennender Sorge", 14 March, contradict the traditional doctrine that no one has the right to propagate religions error? In the English version it reads: "The believer has an inalienable right to profess his faith and put it in practice in the manner suited to him. Laws which suppress or make this profession and practice difficult contradict the natural law."*

The encyclical was first published in German, and both German and Latin versions justify the English rendering of the three words "suited to him". The Italian and French versions have the meaning "suited to it" i.e. "to the faith",1 but this variation has no particular relevance to the difficulty.

It is not in dispute that, in the hypothesis of many religions existing together in a modern State, the authority of the State may concede the civic right to all its subjects of professing any religion which is not subversive of social order. Nor is it in dispute that each individual has an obligation of following the dictates of an invincibly erroneous conscience. The question is whether the above text upholds, not merely a civic right, but a natural, inalienable, moral right of professing that religion which conscience dictates to be true. The solution will depend on the meaning of the word "believer".2

(i) Owing to the widespread demand for religious liberty as a necessary condition for any future world order, the question has been studied afresh, both in America and England, during the last few years. In the first of a series of articles in *Theological Studies,* Rev. J. C. Murray, S.J., observes: "In view of the appeal made here to the natural law, I do not think the term 'der glaubige Mensch' can be taken to mean solely *fidelis* in the theological sense of rhe term."3 Fr Murray is one of the most competent theologians in America and his opinion is of great weight.

In England Mr Christopher Dawson and other distinguished writers of *The Sword of the Spirit* understand the text in much the same sense as Fr Murray, and the late Cardinal Hinsley was accustomed to quote it in support of the policy of practical tolerance for all religious beliefs.4 Similarly, eminent non-Catholic authorities, as the Bishop of Chichester, have welcomed the words as being a clear proclamation of the fundamental religious liberty due to all creeds.5

1 "in den ihtn gcmàsscn Formcn zu Bctatigcn" "eamque formis sibi convenientibus exerceat'' "et à la vivre comme clic veut être vécu'' "c di praticarla in quclla forma chc ad essa convicne".

1 "der glâubigc Mensch" "fidelis" "le croyant" "il credente".

* *Theological Studies,* 1945, p. 283.

* Cf. *The Judgement of the Nations,* p. 114; *The Catholic Herald,* 25 January, 1942.

* Bulletin of *The Sword of the Spirit, 17* November, 1941.

(ii) Notwithstanding the above view, which has much to recommend it at the present time, if it is a valid interpretation of the papal text, our opinion is that the word "believer" means "true believer". We think that the traditional doctrine of the Church, as explained in the encyclicals of Pius IX and Leo XIII, does not permit us to hold that the right to profess any and every form of religious belief is derived directly from the natural law, for the only true religion is the Catholic religion, and the others are objectively erroneous and unlawful.

It could be maintained, we suppose, though only with some subtlety, that the right is derived indirectly from the natural law, inasmuch as the toleration of error for the common good is not, in given circumstances, against the natural law, but rather in accordance with it; though it is hard to see how a right which is so insecure can be described as inalienable.[1]

"Fidelis" in the Code usually means "catholicus", as in canon 2203, §1, though in many canons it has the wider meaning of "baptizatus", as in canon 1126.[2] Its true meaning must be ascertained from the context, and we think that the context of the encyclical supports the view that the word there used means "true believer". It is addressed to the German hierarchy in communion with the Apostolic See; faith is described as "the certain holding as true what God has revealed, and through His Church proposes for belief"; and the passage immediately following the text we are discussing reads: "Conscientious parents . . . have a primary and original right to determine the education of their children given to them by God in the spirit of the true faith and in agreement with its principles and ordinances."

It is, moreover, altogether unlikely that Pius XI departed from the firm teaching of his predecessors on this point, and notably that of Pius IX in the Syllabus.[3]

## 361.—Baptism of Children of Infidels

*Since natural justice is violated if the children of infidels are baptised against the will of their parents, on what principle is this permitted when the children are in danger of death?*

Canon 750, §1: Infans infidelium, etiam invitis parentibus, licite baptizatur, cum in eo versatur vitae discrimine, ut prudenter praevideatur moriturus, antequam usum rationis attingat.

Benedict XIV, *Postremo mense,* Dcnz., n. 1484: Cum id eveniat, ut ab aliquo Christiano Hebraeorum puer morti proximus reperiatur, rem opinor laudabilem Dcoquc gratam is certe efficiet, qui salutem puero aqua lustrali praebeat immortalem. . . .

(i) The principle of natural justice forbidding the baptism of such children against the will of the parents has been consistently defended in all Catholic schools, following St Thomas, II–II, to, 12. The reason is not primarily the danger of the children relapsing into infidelity, but the wrong of violating parental rights. Thus Suarez, ed. Vives, Vol. XX,

1 "unvcrlicrbarcs Rccht" "iurc inalicnabili" "droit inaliénable" "diritto inalienabilc".
2 Cf. Morsdorf, *Recbtsspracbe da Codex,* p. 129.
3 *Ecclesiastical Review,* 1946, CXV, p. 139.

p. 450: "Et similiter quamvis praeceptum baptismi sit generale, tamen directe non cadit in infantes ante usum rationis, quia pro tunc non sunt capaces praecepti. Pertinet ergo ad illos mediis parentibus, qui tenentur et fidem suscipere, et filios suos in ea instituere, et per baptismum initiare." So strongly was this view held in Scotist circles that Durandus did not hesitate to hold the baptism of the children of infidels invalid, if administered against the will of the parents, a doctrine which Benedict XIV rejects.

(ii) The exception in danger of death has always been taught by theologians provided baptism could be administered without danger of scandal, but the reasons justifying this exception are not, perhaps, very satisfying. It is thought that, in such circumstances, the parental right ceases; or it is suggested that, since death is likely to deprive the parents of their children, parental rights suffer very little injury compared with the injury the child will suffer if it dies unbaptized.

Suarez explains it as follows: "quia iam videtur parens moraliter amisisse jus in filium, quia quod parum distat, nihil distare videtur. . . . Quod si obicias, quia baptizare filium, invito parente est intrinsece malum, cum sit contra iustitiam, respondetur primum, id esse verum extra casum necessitatis, in eo tamen cessare solere huiusmodi iura, praesertim cum in illo articulo fere iam sit extinctum paternum ius."

Probably the best way of explaining the exception is by analogy with the danger of physical death. It is everybody's duty, on a principle of charity, to rescue an infant from proximate danger of death, even though the parents, being unaware of the danger, would resent the interference: a child, for example, who is dangerously ill and in need of medical care, should receive it, even though the parents are wholly averse. There is a conflict of rights in which the more pressing one has precedence. Similarly, it would appear, when a child is in proximate danger of spiritual death, the natural rights of its parents must yield to the more pressing necessity of the child's salvation. Cf. *Diet. Theol.,* II, col. 344; *Diet. Droit Canon.,* II, col. 159. *Commentarium pro Religiosis,* 1959, XX, p. 22, contains a very full discussion by Oestcrlc on the degree of danger required before the exception can be permitted.

*Ii seems that the teaching of St Vhomas, definitely sanctioned by Benedict* X71*/, bas in mind the juridica! effect of baptising the infants of infidels, namely that they would be taken from the custody of their parents, which is clearly a violation of parental right. Bui if, as nowadays, thisjuridical effect does notfollow, no parental right appears to be violated in baptising the infant children of infidels against the will of the parents.*

*Summa Theol.,* II-II, to, it:... de jure naturali est, quod filius, antequam habeat usum rationis, sit sub cura patris; unde contra iustitiam naturalem esset, si puer, antequam habeat usum rationis, a cura parentum subtrahatur, vel de eo aliquid ordinetur invitis parentibus. . . .

(i) In the *sed contra* of this article the force of the argument is in the injustice of withdrawing a child from the care of its natural guardian, and many writers still stress this point, almost exclusively, in discussing the question. Since the famous case of Mortara, during the pontificate of Pius IX, whilst he was still a temporal sovereign, there has been no instance

of an infant, baptized against the will of its parents, being withdrawn from their custody. But the legal right of the Church in such cases is still defended, even though the Church nowadays has neither the power nor the desire to exercise it. Therefore, since by baptism a conflict of rights is created, to the detriment of parental rights, it is still correct to discuss the subject from the angle of rights over the custody of the infant, even though there is no possibility of the rights of the Church ever being enforced.

(ii) In the concluding words of the above quotation St Thomas goes much further, and teaches that it is against natural justice not only to take an infant from the custody of its parents, but to interfere with the child's condition in any way if the parents arc unwilling; and, certainly, the conferring of baptism is an interference. Thus the more considerable commentators, such as Billot, have in mind any interference whatever: . . nam sese ingerere absque competenti auctoritate in regimine et cura eorum qui sub alterius potestate sunt constituti, praeter et contra voluntatem eius ad quem pertinet, est violare ius illius, ac per consequens, facere ei iniuriam ... Et re quidem vera eiusmodi baptizator vel haberet hanc auctoriatem immediate a Deo vel mediante Ecclesia. Non mediante Ecclesia, cum ipsa in cos qui foris sunt, careat potestate. Nec etiam immediate a Deo, quia Deus consideratur vel ut auctor naturae, vel ut auctor gratiae: ut auctor naturae posuit pueros sub providentia et regimine parentum, ut auctor gratiae nullam contulit auctoritatem ad sacramentorum administrationem, praeter eam quae in Ecclesia et ab Ecclesia est."[1]

## 362.—Leakage Precautions

*To hinder an unnecessary increase of lapsed Catholics, may the following rules be licitly followed?*

*(i) That baptism should be refused to the children of Catholic parents, if they will almost certainly not be educated as Catholics.*

*(ii) That baptised Catholic children should not be allowed to make their first confession, ot at least their first Communion, if they never come to Mass or do so very seldom indeed.*

*(iii) That Catholics should not be allowed to enter into matrimony who will certainly not educate their children as Catholics.*

*(iv) That converts should not be received into the Church until after at least six months' instruction and test, and unless there is every prospect of their remaining good Catholics.*

(i) Such children should be baptized provided there is, at least, some probable hope that they will be brought up as Catholics. Our correspondent's use of the word "almost" leads us to decide that there is still some sort of hope in the case. "Baptizari possunt infantes illorum parentum catholicorum, qui propter indifFcrcntismum aut etiam odium in Ecclesiam detrectant baptismum. Etenim cum isti parentes nondum publice apostaverint a vera religione, adhuc aliqua spes adest fore, ut infantes post adeptum usum rationis instruantur in religione catholica."[2] The hope is

[1] *De Sacramentis,* I, Thesis xxviii.
[2] Prümmcr, *Tbeol. Moratis,* cd. 1955. III, §127· Cf. *The Cter&y Review,* 1945, XXV, p. 570.

strengthened by securing a godparent who explicitly undertakes to do what is morally possible to safeguard the child's faith.

(ii) The sacraments may not be refused to those properly disposed. Provided a resolution is obtained, proportioned to the children's age and circumstances, that they will observe the law of Sunday Mass in future, they should be absolved and should be admitted to first Communion.

(iii) The excommunication of canon 2319 against those entering matrimony with a pact to educate their children as non-Catholics is not incurred until the parties have contracted marriage; moreover, the intention in the case put by our correspondent is not quite the same—it is rather another aspect of indifferentism to their obligations as Catholics.

The intention of the contracting parties is gravely wrong. If it is not publicly known, they are only occult sinners and a priest cannot refuse to assist at their marriage. Sacramental confession cannot strictly be required.

If the intention is publicly known, they arc public sinners and the law in the case is contained in canons 1065, 1066. The priest must refer the matter to the Ordinary "qui inspectis omnibus rei adiunctis, ei permittere poterit ut matrimonio intersit, dummodo urgeat gravis causa et pro suo prudenti arbitrio iudicet satis cautum esse catholicae educationi universae prolis".

(iv) It is impossible to formulate a rule determining the time limit for instructions of converts. If the regulations of the Ordinary are observed, an individual priest would be doing wrong to be more exacting. Any convert who has submitted to the preliminary course of instruction, and who desires to be reconciled to the Church, has *ipso facto* a good chance of being a good Catholic. Some of the points raised in these questions touch upon matters which are decided by diocesan laws in various places.

## 363.—Women in the Services

*It is my experience and that of all the Army chaplains I have met that women and girls are far less faithful to their religion after joining the Sendees than men. In civil life the opposite is true on the whole. What is the explanation?*

Pius XI, *Divini Illius,* 31 December, 1929, C.T.S. new trans., §50: It is well to repeat this warning here; for in these days there is spreading a spirit of nationalism which is false and exaggerated, as well as dangerous to true peace and prosperity. Under its influence various excesses arc committed in giving a military turn to the so-called physical training of boys (sometimes even of girls, contrary to the very instincts of human nature).

Pius XII, Radio address quoted in *The Standard* (Dublin), 7 May, 1943 : The structure of society, which regards man and woman as equal, is resting on a false foundation. Nature has given them different fields of activity. It remains to be seen whether this natural difference does not call for a change in the present social trend.

(i) The fact noted by our correspondent must, wc think, be admitted. We have ourselves heard from every chaplain consulted that, whilst many of the women arc admirable, it is true that the majority arc far less faithful than the men, even in stations where both sexes have equal opportunity of

practising their religion. The explanation that their religious education in the schools has been all wrong is quite inadequate, since the men have had substantially the same training. Nor is the disparity accounted for, except perhaps in a very small minority of cases, on the supposition that the chaplains, for very proper and prudent reasons, are unable to establish personal contacts with the women in quite the same degree as with the men. For, regarded in its broad aspects, the same difficulty applies to pastoral visitation in the parishes, where it is usually found that women keep to their religious duties without any special or personal encouragement.

(ii) The simplest solution is so derogatory to their sex that one is absolutely unwilling to accept it unless every other explanation is found insufficient. It is that most women are frailer in character than most men, unable to stand up to the least breath of ridicule or criticism from their companions, unassertive of their religious rights, and so lacking in strength of mind that they automatically adopt the standard set by their non-Catholic companions in huts or billets. This explanation is to our mind wholly unsatisfactory. Whatever be the truth as regards physical courage, it is generally agreed that women are superior to men in moral courage, and the proportion of women to men who were faithful to the end on Calvary illustrates this contention. See, nevertheless, St Thomas's opinion, II–II, 156, r, ad 1.

(iii) It would seem, therefore, that the correct answer is that there is something, as the Holy Father says, contrary to the instincts of human nature in subjecting the female sex to a military life. We have grown accustomed, indeed, to women being engaged in occupations and professions which used to be considered the proper sphere of men alone. But military life, it appears, is so notably unsuited to their nature that its effect quickly becomes apparent in fostering a notable indifference towards religion. What exactly is this disintegrating clement of military life which so adversely affects a woman's character we are unable to say.

God's idea of the \zaliant Woman, in the Book of Proverbs, includes almost every human activity except that of soldiering. The disagreeable demands of totalitarian warfare may make even this inevitable, for a time at least, and "nowadays the Valiant Woman is rather she who can stand up against current views, who is not caught by shibboleths and catchwords, nor swayed by lax conventions".1

## 364.—Freemasons

*Is there any ruling on the question whether a Catholic wife may accompany her husband, on a ladies' night, to a masonic dinner, a purely social function haring no direct connection with the craft?*

It is quite evident that, on a general principle, Catholics should not attend masonic functions, even though they arc not actually sessions of the society. The attitude of the Church with regard to freemasonry is so clear and explicit that Catholics must avoid even the appearance of lending support to this sect, membership of which incurs *ipso facto* excommunication reserved to the Apostolic Sec. There would usually be some scandal in

1 Archbishop of Liverpool, *The Tablet,* 15 December, 1934.

attending a masonic dinner, and in the case of the weaker brethren some danger of perversion.

But, if one is to hold that the act of attending at such a function is in itself wrong, it would have to be shown that the Church forbids even civil communication with freemasons, or that the action comes within the term "concurrentes ad delictum" of canon 2209. In our view, neither of these points can be established. It is a question, therefore, of an action, in itself indifferent, which is liable to be an occasion of perversion or of indirect scandal. In the case of a well-instructed and practising Catholic, the danger of perversion may be assumed not to exist; we arc left with the question of indirect scandal. As in all similar cases, indirect scandal may be permitted for a proportionately grave cause: for example, a Catholic wife may feel compelled to accompany her husband in order to avoid domestic quarrels; in our view, this would be a reason justifying attendance. The matter is one which must be decided by the individual conscience. If there is actually no compensating reason, Catholics, whether male or female, should not attend masonic dinners.

I can find only one text which bears directly on the question submitted and which supports the solution given. Génicot, *Casus* 33, page 30 of the 1928 edition: "Euphrosina, dum maritum, metu (ut supponitur) coacta, in coetu massonum comitatur, per se non peccat, modo ab actibus in se illicitis abstineat, neque se in proximum peccandi periculum scienter coniciat; nuda enim assistentia nullam sectae agnitionem involvit et ob grave damnum vitandum cohonestatur. . . ."

## 365.—Ceasing to be a Catholic

*When dots an adult who has been baptised in the Catholic Church cease to be a Catholic?*

The question is equivalent to asking who arc to be considered members of the Church, and the answer will vary according to the meaning and extent given to the word "Church". Hence the great confusion arising from the use of terms such as the Invisible Church and the Soul of the Church (as distinct from its Body).

If, however, we understand by the Catholic Church a visible external society functioning in this world, abstracting altogether from its internal spiritual characteristics, it is possible to determine when a baptized Catholic ceases to be a member of it. Even with these limitations, theologians and canonists arc not in complete agreement on certain points. As a definition of what constitutes a member of the Church, in this sense, the following suggested by Dr Lamiroy is as good as any: "Membra Ecclesiae sunt omnes et soli valide baptizati, baptismo aquae, qui eiusdem fidei Christianae professione, communione sacramentorum et bonorum spiritualium, regimine tandem legitimorum pastorum colligantur."[1] It is based on two theses of Cardinal Billot:

*Thesis XI:* Licet character baptismalis sit de se sufficiens ad incorporandum hominem verae Ecclesiae Catholicae, nihilominus ad hunc effectum

[1] *Collât. Brttgen.,* 1925, p. 115.

requirit in adultis duplicem conditionem. Et prima quidem conditio est ut non impediatur sociale vinculum unitatis fidei per haeresim formalem aut etiam mere materialem. Verumtamcn quia huiusmodi impedimentum illa sola haeresis affert, quae in apertam professionem transit, dicendum est solos notorios hercticos a corpore Ecclesiae excludi.

*Thesis XII·.* Altera conditio pro adultis requisita in eo est, ut non impediatur vel non solvatur vinculum communionis, quod duobus modis potest destrui. Primo per ipsius hominis factum, hoc est per schisma, de quo proportionalitcr sentiendum est sicut de haeresi. Deinde per sententiam ecclesiasticae auctoritatis, id est per excommunicationem quae plenam et perfectam habeat excommunicationis rationem. Quia vero nulla videtur esse talis, nisi ea qua quis vitandus efficitur, sequitur quod ad Ecclesiae corpus adhuc pertinere possunt excommunicat! tolerati, sive occulti sint sive etiam notorii."[1]

A person, therefore, ceases to be a Catholic by openly and publicly professing heresy, schism, or *a fortiori* apostasy; the terms are defined in canon 1325, §2. An act of this kind is established beyond all doubt if the person joins a society or sect which professes any of these things. But it is also established, in our view, if the person, without joining any other visible body, notoriously and openly declares, for example, that he has left the Church and desires to have nothing more to do with it. It is quite immaterial whether this course is taken in good faith or in bad faith. On the border-line are those whose departure from the Church is merely implied in the non-exercise of the Catholic religion. In our view they should be regarded as Catholics until they have positively rejected their membership of the Church.[2]

Regarded from the opposite angle, certain persons cease to be members of the Church because that society has excluded them from its communion —an elementary right which any society in this world enjoys. But there is a wide divergency amongst the writers on this point, since it is a question what the Church intends, or intended in past ages, by inflicting the censure of excommunication. The Roman Pontifical, *Ordo Excommunicationis et Absolutionis,* expresses the intention of expulsion from the Church in strong and unequivocal terms: ". . . membrum putridum et insanabile, quod medicinam non recipit, ferro excommunicationis ab Ecclesiae corpore abscindamus, ne tam pestifero morbo reliqua corporis membra veluti veneno inficiantur". It was what the old law called "major" excommunication, but in our present law excommunication as such, even when *ferendae sententiae,* does not deprive the delinquent of membership of the Church, and therefore of the right to bear the name "Catholic". It deprives him of communication with the faithful in certain respects, c.g. by depriving him of the sacraments. For the rest he is "tolerated", and the ancient distinction between "major" and "minor" excommunication is now replaced by the distinction between ''excommunicati tolerati" and "excommunicat! vitandi".[3] Cf. *Mystici Corporis,* 29 June, 1943; C.T.S., η. *zi.*

Many authors still write about all excommunication in terms which

[1] *De Ecclesia.* Ed. 1909. pp. 291, 504.

[2] Some hold that people of this kind often cease to be members of the Church, since their condition is equivalent to heresy, etc. Cf. Lcrchcr, *Institut. Dogmat.* (1959), Vol. I, p. 255.

[3] Canon 2258.

imply that the censured person is deprived of membership in the Church; others write as though not even the *excommunicabis vitandus* is deprived of membership. The correct view is that the *excommunicabis vitandus* alone ceases to be a Catholic. This is the teaching of Cardinal Gasparri: "Extra Ecclesiam a Jcsu Christo instituto sunt: 1. non baptizati; 2. manifesti apostatae, haeretici, schismatici, excommunicat! vitandi. Excommunicat! tolerati sunt Ecclesiae membra, sed excluduntur ab illis effectibus communionis fidelium qui in sacris canonibus enumerantur. . . ,"[1]

The conditions required to constitute a person *excommunicabis vitandus* are in canon 2258, §2: "Nemo est vitandus, nisi fuerit nominatin'! a Scde Apostolica excommunicatus, excommunicatio fuerit publice denuntiata et in decreto vel sententia expresse dicatur ipsum vitari debere, salvo praescripto can. 2545, §1, n. 1." Canon 2345 determines that a person striking the Holy Father is *ipso facto* vitandus, and it is the only example of this penalty being incurred *latae sententiae.*

## 366.—Non-Catholic Education

*In some foreign missions, as in Japan before the war, the civil law bars the Christian education of children. What are the obligations ofparents in such cases?*

*S. Off.,* 21 April, 1958; *Sylloge,* n. 206, bis; *Commentarium pro Religiosis et Missionariis,* 1938, p. 75.

Excellentissime Domine,

Dubia et explicationes a Te datas circa peculiares difficultates, quae in istis regionibus ex consuetudinibus oriuntur contra catholicam educationem prolis, habitae vel nasciturae a neophitis, ad Supremam S.C.S. Officii relata sunt.

Adiunctis a Te expositis rite examinatis, Sup. illa S. Congregatio, per litteras diei 19 elapsi mensis februarii, ita respondit:

(1) Utrum Missionarii baptizare possint parentes catechumenos, quorum proles major natu non vult converti; aut qui super prolem minorem juxta mores terrae omne jus amiserunt, quia eam tradere tenentur parentibus suis paganis nccnon mahumetanis, qui impediunt educationem catholicam, et hac de causa ipsi (coniuges) conversionem aut educationem catholicam universae prolis promittere non possunt;

(2) Utrum Missionarii in matrimonium conjungere possint catholicos qui iuxta mores terrae unam aut aliam prolem nascituram parentibus aut tutoribus paganis nccnon mahumetanis tradere tenentur, qui educationem catholicam impedire praevidentur;

(3) Utrum valide dispensari possit super impedimento disparitatis cultus cum iis qui super maiores natu potestatem amiserunt, aut qui juxta mores terrae unam aliamve prolem nascituram parentibus aut tutoribus paganis nccnon mahumetanis tradere tenentur, qui educationem catholicam impedire praevidentur, et propter hoc contrahentes educationem catholicam universae prolis promittere non possunt.

*Resp.* Ad primum et ad secundum: *Affirmative,* dummodo partes paratae

[1] *Catichismus Catholicus,* QQ. 158 and 161.

sint facere quod in se est ad fovendam conversionem et obtinendam catholicam educationem universae prolis;

Ad tertium: *Affirmative* quoad priman partem (seu quoad casus in quibus proles catholica jam est natu maior); quoad secundam partem (seu in aliis casibus) *Affirmative,* dummodo partes paratae sint facere quod in se est ad obtinendam catholicam educationem universae prolis.

This reply of the Sacred Congregation, given for Japan, is accompanied by an official commentary in which the solution given is justified by theological reasoning. The law of canons 1061, 1071, it 13 and the sanctions of canon 2319, §i, apply without any reserve to those parents who neglect their obligations through their own fault, or who are found to be the cause of the education of their children outside of the Church. But if they arc not in any way responsible, and if every marriage open to them is under the same objection, namely that they arc prevented from securing effectively the Catholic education of their children, then their natural right to marry must be respected. It is understood that they will do whatever is possible to observe the divine law, and the children may be baptized, but the law docs not bind them to do what is impossible, nor are they rightly to be considered, in these circumstances, the cause of their children being brought up non-Catholics. By generating the children they co-operate, indeed, but it is material co-operation, in so far as the future education of the children is concerned; the celebration and the use of marriage in such cases is an action with a double eflect, and is to be judged according to the familiar principle. The commentary concludes:

"Quapropter, quantumvis ex una parte fidelibus ac catechumenis gravissima parentum obligatio prolem catholice educandi inculcari debeat, ex altera parte eis non gravius onus imponendum est, quam auctor naturae et gratiae, Deus ipse, imposuit; neque ab iis exigendum est, ut, si postquam quae facere potuerunt fecerunt, ad catholicam educationem in tuto collocandam, eam obtinere non potuerunt, aut innupti maneant aut extent sacramentis et gratiis Ecclesiae privatis."

## 367.—Non-Catholic Schools

Ir *it necessary to obtain the Ordinary's sanction for attendance at a non~Catholic school in places where no Catholic school exists? The children will not attend the religions class at the school, and will be instructed adequately in the Catholic faith outside school hours.*

Canon 1374: . . . Solius autem Ordinarii loci est decernere, ad normam instructionum Sedis Apostolicac, in quibus rerum adiunctis et quibus adhibitis cautelis, ut periculum perversionis vitetur, tolerari possit ut eae scholae (acatholicac) celebrentur.

*Declaration of the English Bishops,* August, 1905.3: No individual priest or confessor is entitled to decide where necessity of this nature exists, but the matter is one to be referred to the Ordinary of the diocese for his counsel and judgement.

The declaration of the English bishops, fully sanctioned twelve years later in canon 1374 of the Code, has often been repeated by individual

Ordinaries, e.g. *Lancaster Statutes* (1945), n. 22; *Middlesbrough Decrees* (1935), n. 258.

In places where no Catholic school exists the Ordinary may use his right and require each case to be presented to him separately; or, if he so desires, he may inform the priest of the place that, pending the erection of a Catholic school, parents may send their children elsewhere, *servatis servandis.* It is entirely and exclusively the business of the Ordinary to give a decision, and the clergy have only to acquaint him with the local circumstances and obey his directions.

*A parent, without the Ordinary's sanction, sends his children to a non-Catholic school, withdrawing them from religions instruction therein, and otherwise educating them sufficiently as Catholics. Does the parent incur the censure of canon* 2319,51,4? *Does he incur it if the child is not withdrawn from religions instruction?*

Canon 2219, §t : In poenis benignior est interpretatio facienda.

Canon 2319, §1,4: Subsunt excommunicationi latae sententiae Ordinario reservatae . . . parentes vel parentum locum tenentes qui liberos in religione acatholica educandos vel instituendos scienter tradunt.

§2. Ii de quibus in nn. 2-4, sunt praeterea suspecti de haeresi.

Canon 2515: Suspectus de haeresi, qui monitus causam suspicionis non removeat . . . si intra sex menses a contracta poena completos sesc non emendaverit, habeatur tanquam haereticus, haereticorum poenis obnoxius.

(i) The parent does not incur the excommunication of canon 2319, §1, 4, if the child is withdrawn from non-Catholic religious instruction. If he is not withdrawn from the instruction, but, nevertheless, educated privately at home as a Catholic, it is doubtful whether the censure is incurred, and much will depend on the nature of the non-Catholic instruction. The canon, it is true, distinguishes between "education" and "instruction", and deems both equally worthy of the censure. But if it is established that the non-Catholic "instruction" is merely Bible reading, as it generally is, the parent may be given the benefit of the doubt, unless directions of the local Ordinary exist to the contrary. If the instruction is indubitably heretical, the censure is incurred, and the parent is suspect of heresy.

(ii) In both instances the parent has violated the grave law of canon 1374, and in the internal forum of the confessional it is open to the confessor to regard the penitent as indisposed for absolution, unless he undertakes to obey the law by seeking the Ordinary's sanction, which might be forthcoming if the child is withdrawn from non-Catholic instruction.

Is the parent, also, to be refused the sacraments publicly as a "public sinner", according to the terms of canon 855, §1 : "Arcendi sunt ab Eucharistia publice indigni, quales sunt cxcommunicati, interdicti, manifestoque infames . . ."? Inasmuch as the refusal of Holy Communion is a most serious penalty, the public offence which merits it must not only be gravely sinful, but publicly known, and recognized as gravely sinful by the public conscience. The local Ordinary may have decided this issue, as he is entitled to do, and directed that parents who violate canon 1374 are to be refused Holy Communion as public sinners. If he has not done so, we think that the proper course is to seek his decision in an individual case before publicly refusing the sacraments.

## 368.—Children in Non-Catholic Schools

*What are the obligations of an assistant priest ton·arris children in non-Catholic schools? The parents are usually indifferent and the children will not attend catechism in the church.*

It is for the curate to carry out the wishes of the parish priest, who in turn must obey the directions of the common law and of the Ordinary, both as regards the position of the parents and of the children. The obligations of the parish priest are expressed generically in canons 467, §1, and 1529; specifically in relation to the sacraments of penance, confirmation and Holy Eucharist, in canons 1530 and 1351; canon 1333 provides for the delegation of this catechizing duty to clerics, lay persons and the Confraternity of Christian Doctrine, and it is assumed that the parish priest will supervise the work of his delegates.

These legal principles are necessarily limited in practice by what is morally and humanly speaking possible. If a large number of children attend neither the Catholic school nor the catechism classes in the church, it is hardly possible for the parish priest to provide a private instructor for each child, even assuming that his attentions would be welcomed by the parents. But between this extreme and the attitude of taking no interest whatever in them there is a reasonable mean: with the time at his disposal, and by taking opportunities which may be more favourable in some instances than in others, he will do what is possible to prepare some of these children at least for the reception of the sacraments.

It may be objected that this procedure amounts to encouraging parents to send their children to non-Catholic schools, and is in the long run hostile to the common good. This may well be, but in view of the parish priest's certain obligations from the above canons, we think that he may not, for this reason alone, decline to take any interest in such children, unless his attitude is sanctioned by the Ordinary.

From canon 476, §6, the assistant priest (vicarius cooperator) must assist the parish priest "in universo paroeciali ministerio", which includes catechizing these children within the limits described above in the second paragraph, a duty which he must perform to the best of his ability even though not expressly directed by the parish priest to do so.

## 369.—Origins of the Catechism

*Couldyou give some brief account of the origins of our English "Penny" Catechism, or some indication of books dealing with the subject?*

The history of a text which is so widely used in teaching the young is of interest, and some knowledge of it might, perhaps, help to soften the harsh criticisms of the book which are often heard.

The catechetical method of question and answer is deeply rooted in ecclesiastical tradition, and is preserved in the baptismal rite and in other

liturgical functions as, for example, the consecration of bishops. Also texts arc in existence such as "Disputatio puerorum per interrogationes et responsiones", wrongly attributed to Alcuin,[1] which appears to be what we call a catechism. But it is generally admitted that the activities of the reformers were responsible for the publication of Catholic catechisms in the modern sense; they were designed to counteract the heretical teachings of the new books. The *Catechism of the Council of Trent* was rather an official manual for the clergy than a text for the laity, and the great work of St Peter Canisius was similarly exhaustive, some of the answers occupying four or five pages. Many editions of Canisius, however, were abridged for the use of the young, and the work is of great importance; for its main division, under the headings of Faith, Hope and Charity, was retained by Bishop Challoner in compiling the catechism which is the parent of our present book.

Independent works, either original or in translation, were current in England during the early seventeenth century, and the most famous of them, also a remote parent of our catechism, was the work of a Douay priest, Henry Turberville. It is entitled "An Abridgement of Christian Doctrine" and appeared first at Douay in 1649, followed by a summary for the use of children probably about 1688. Both of these books are mentioned in the *Rules of Standon School* (1753) as being used by the scholars and committed to memory in the morning during the combing of their hair: "The short abridgement of ye Christian Doctrine is indeed ye Catechism in use for children very young."

The connecting link between these earlier works and our present book is Bishop Chailoner's catechism, published first at St Omer in 1772: *Abridgement of Christian Doctrine: Revised and Enlarged by R.C.* There is a copy of this rare text at Oscott and it is believed to be the only one known to exist. The saintly Vicar Apostolic of the London District is always held in affectionate remembrance for his courage and vigour in one of the darkest periods of our Catholic history. Amongst the innumerable books, pamphlets and controversial works written by him, the catechism is, at least, of equal importance with the *Garden of the Soul,* and Canon Burton devotes considerable space to it in his biography. The basis of his work was the Douay catechism, the Canisian division under the theological virtues being retained. The "Daily Exercise" of the Douay book was kept and a new section added entitled "The Christian's Rule of Life". It remained in use unchanged for nearly seventy years until, in 1836, a new edition with some fresh questions added was brought out by the authority of the Vicars Apostolic. A further revision took place in 1859, the work of a commission appointed at the Third Provincial Council at Oscott, which included Ullathorne, Faber and Manning; the longer questions were divided and the whole arranged in a more intelligible order. In 1888 an edition was published by Burns & Oates, with the authority of the English Bishops, but it is not clear who the revisers were; the chief change, and a prominent one, consisted in making all the answers distinct categorical statements, a method which often meant repeating *in extenso* the wording of the question. Later changes do not appear to have affected very substantially the substance of the text; they arc concerned with necessary alterations in order to bring the

[1] *Did. Tbtol.,11,* col. 1897.

work up to date with current legislation; there is an occasional alteration of phrases.

The little book has, therefore, a venerable history and, quite apart from its intrinsic value, is a link with penal times which should not lightly be destroyed. A detailed account of its origins may be read in Canon Burton's *Life and Times of Bishop Challoner,* II, pp. *159-62. A* much closer analysis of the subsequent editions was made by W. G. Twiney in *The Oscotian,* 1902, p. 76. Apart from these two references I know of no other connected account of the subject, though doubtless some articles have been written in periodicals of recent years.

For modern tendencies and suggestions, cf. *Irish Ecclesiastical Record,* 1943, LXII, p. 392.

## 370.—Confraternity of Christian Doctrine

*What was the origin of this confraternity, and of the law ordering it to be erected in every parish?*

Information about its origins is given by the writers on indulgences, e.g. Beringcr, II, §260, and by the commentators on canons 711, §2, and 1333, §1.

The confraternity first began as one of the many activities of the counter-Reformation, and was an off-shoot of the religious congregation of the *Fathers of Christian Doctrine* (an institute somewhat resembling Barnabites, Oratorians and others) founded by Mark Cusani in 1562. Certain members elected to live a community life, others preferred to live in the world as members of the *Confraternity of Christian Doctrine.* Various Roman basilicas and churches have been, at one time or another, the headquarters of the confraternity: St Peter's, St Martin's, and finally the one mentioned at the head of the new folium of indulgences, Santa Maria del Pianto. The indulgences which could formerly be gained by its members are now considerably increased.[1] It is not to be supposed, nor indeed to be desired, that people who would not otherwise teach the Catholic faith will be moved thereto solely for the indulgences. But this grant is an indication that the Church regards the effective teaching of Christian truth as amongst the most pressing needs of the world at the present time.

From canon 711, §2, the *Confraternity of Christian Doctrine* should exist in every parish, and it is *ipso facto* aggregated to the Roman Archconfraternity. As regards the *Blessed Sacrament Confraternity,* the *Code Commission* decided, 6 March, 1927, that any other pious union or sodality sufficed for observing the law; we think the same may be said of the Christian Doctrine Confraternity.[2] The law requiring it to exist in every parish was promulgated by Pius X, in the encyclical *Acerbo Nimis,* 15 zXpril, 1905; *Fontes,* n. 666, §16, IV; Eng. tr. *Leeds Synods,* 1911,?. 155.

[1] 21 December, 1939; *A.A.S.,* i94°» XXXB» P· 16S.
[2] Bouscaren-Ellis, *Canon Law,* p. 6S1.

## 371.—Pagan Rites

*To what extent are certain pagan rites, formerly forbidden, now permitted as national customs without religious significance?*

*Propaganda,* 8 December, 1959: Instructio Circa Quasdam Caeremonias et Iuramentum super Ritibus Sinensibus; *A.A.S.,* 1940, XXXII, P. M.

Plane compertum est in Orientalium Regionibus nonnullas caeremonias, licet antiquitus cum ethnicis ritibus connexae essent, in praesentiarum, mutatis saeculorum fluxu moribus et animis, civilem tantum servare significationem pietatis in antenatos vel amoris in patriam vel urbanitatis in proximos.

Quapropter hoc S. Consilium Christiano Nomini Propagando, Summo Pontifice Pio XI f. r. approbante, novas super hac re annis 1935 et 1956 impertiit Ordinariis Manduriae et Imperii laponici, iuxta can. 22, normas hodiernis rerum adiunctis magis congruentes.

Nuper vero Emi Patres eidem S. Consilio Christiano Nomini Propagando praepositi, in generali consessu, die 4 vertentis mensis Decembris celebrato, consideraverunt an aliis quoque in locis, ubi similes rerum adiunctorum mutationes decursu temporum advenisse constaret, similis agendi ratio admittenda esset.

Argumentis itaque hinc inde attente perpensis, prudentium atque experientium virorum sententia exquisita, iidem Emi Patres, quae sequuntur censuerunt esse declaranda:

(i) Cum Sinense Gubernium pluries aperteque enuntiaverit omnibus esse liberum quam malint religionem profiteri et alienum esse a sua mente dc rebus religiosis leges aut iussa edere; ideoque caeremonias, quae in honorem Confudi a publicis Auctoritatibus sive peraguntur sive iubentur, non fieri animo tribuendi religiosum cultum, sed hunc solum in finem ut foveatur et expromatur in virum darissimum dignus honor et in traditiones patrum debitus cultus: licitum est catholicis adesse actibus honoris, qui ante Confudi imaginem vel tabellam, in monumentis confucianis vel in scholis perfiduntur.

(2) Ideoque non habendum est illidtum imaginem Confudi, vel etiam tabellam eius nomine inscriptam, in scholis catholicis collocari, praesertim si Auctoritates id iusserint, aut eam capitis inclinatione salutare. Si quando timeatur scandalum, declaretur recta catholicorum intentio.

(3) Tolerandum ut catholici magistratus et alumni, si publicis caeremoniis adsistcrc iubeantur quae speciem praeseferant superstitionis, intersint quidem, dummodo, ad mentem can. 1258, passive se habeant signaque illius tantum obsequii faciant, quod ut mere civile iure haberi possit; declarata, ut supra, sua intentione, si quando hoc necessarium apparuerit ad falsas interpretationes sui actus removendas.

(4) Inclinationes capitis atque aliae civilis observantiae manifestationes ante defunctos vel defunctorum imagines, et etiam ante tabellam defuncti, simplid nomine inscriptam, uti licitae et honestae habendae sunt.

Considerantes praeterea iidem Emi Patres iuramentum super ritibus sinensibus a Summo Pontifice Benedicto XIV per Constitutionem Ex *quo singulari* diei 11 Iulii 1742 omnibus sacerdotibus (in Sinarum Imperio aliisque

ci conterminis sive adjacentibus Regnis ac Provinciis) imperatum, non plene congruere cum recentibus normis ab hac S. Congregatione datis, atque insuper idem iuramentum nunc temporis uti disciplinare instrumentum omnino esse superfluum, cum notum sit antiquas de ritibus sinensibus controversias esse pacatas, et, ceterum, missionaries et alios sacerdotes nulla indigere juramenti coactione ut promptam filialemque praestent S. Sedi obedientiam: consuerunt dispensandum esse ab obligatione illius juramenti, ubicumque, sive in Sinis, sive alibi illud in usu esset; firmis manentibus ceteris praescriptis Summi Pontificis Benedicti XIV, quatenus recentioribus Instructionibus non sint immutata, prae primis prohibitione super ritibus sinensibus disputandi.

Quam Emorum Patrum sententiam, Ssmo Domino Nostro Pio Prov. Div. Papae XII, ab infrascripto Cardinali huius S. Congregationis de Propaganda Fide Praefecto, in audientia diei 7 mensis Decembris relatam, Sanctitas Sua in omnibus dignata est approbare et ratam habere.

Datum Romae, ex Aedibus Sacrae Congregationis de Propaganda Fide, dic 8 mensis Decembris a.d. 1939, in festo Conceptionis Immaculatae B.M.V.

The lawfulness of Christians giving ritual honours to Confucius had always been in dispute, and gave rise to serious controversies between the missionary orders engaged in evangelizing China. The fathers of the Society of Jesus have consistently been in favour of permitting these ceremonies, and the Holy Sec in 1955 and 1936 issued instructions in this sense for certain localities. These documents, which were not all printed in the *Acta Apostolicae Sedis* but in various other journals, are conveniently assembled in *SyHoge . . . Ad Usum Missionariorum* (1938): 28 May, 1935, n. 192; 26 May, 1936, n. 201.

The reasons underlying this (1939) decision of the Church, which happily settles any remnants of controversy, are to be discerned in the change of outlook which the Chinese nation has itself adopted in recent years. The State examination on the doctrines of Confucius—formerly a *sine qua non* for any government employment—was abolished in 1905, and in 1912 the republic decided that its subjects were free to profess any religious belief; it was further declared that the national honours given to Confucius were not of a religious character. The practices nevertheless remain rooted in the national life, and, in accordance with the policy of the Church in missionary countries to encourage an indigenous culture, art and priesthood, it is now definitely stated by the Holy See that the customs may remain undisturbed, provided whatever danger of scandal there may be is effectively removed. This decision about ceremonies in honour of Confucius is extended in n. 4 to the honours universally given by the Chinese to their deceased.

The oath, which was required in documents as late as 1935, is contained in Ex *quo singulari* of Benedict XIV.[1] The missionary taking it used to swear to obey various papal constitutions prohibiting certain Chinese rites and ceremonies, but as the discipline is now radically changed the oath is superfluous and is abolished.

Probably the best commentary on this document is the teaching of the Holy Father in *Summi Pontificatus:* "The Church aims at unity, a unity

[1] *Гоη/u,* n. 529, §27.

determined and kept alive by that supernatural love which should be actuating everybody; she does not aim at a uniformity which would only be external in its effects, and would cramp the natural tendencies of the nations concerned. Every nation has its own genius, its own qualities, springing from the hidden roots of its being. The wise development, the encouragement within limits, of that genius, those qualities, does no harm, and if a nation cares to take precautions, to lay down rules for that end, it has the Church's approval. . . . The missionaries of the divine word devote years of patient labour to the study of conditions; they spare no effort to understand the civilization and the institutions of the people they are dealing with; and then they try to cultivate and develop the individual gifts of that people in such a way as to secure the richest possible harvest for the gospel of Jesus Christ. Anything in the national customs that is not indissolubly bound up with superstition and false doctrine is always carefully considered and, if possible, preserved intact. In a particular case of this kind, which called for prudence and wise treatment, Our Predecessor generously adopted a view which marks him out and will always mark him out as a great intellect and a great lover of souls. It is hardly necessary to tell you, worshipful Brethren, that We intend to follow, without hesitation, the same course."[1]

The teaching and position of Confucius in the cultural life of the Chinese is summarized in n. 4 (R. 104) of the C.T.S. *Studies in Comparative Religion.* /Xn exhaustive commentary on the above instruction is given by Fr Tabera, C.M.F., in *Commentarium pro Religiosis el Missionariis,* 1940, pp. 5-14.

## 372.—The Index and Oriental Catholics

*Are Catholics of oriental rites affected by the Code laws relating to forbidden books?*

Canon 1: Licet in Codice iuris canonici Ecclesiae quoque Orientales disciplina saepe referatur, ipse tamen unam respicit Latinam Ecclesiam, neque Orientalem obligat, nisi de iis agatur, quae ex ipsa rei natura etiam Orientalem afficiunt.

Canon 1596: Libri ab Apostolica Sede damnati ubique locorum et in quodcunque vertantur idioma prohibiti censeantur.

*S.C. pro Ecclesia Orientali* (n.d.), *A.A.S.,* 1944, XXXVI, p. 25: Cum quaesitum fuerit utrum fideles orientalis ritus teneantur, praeterquam can. 1596 C.I.C., etiam can. 1399, Sacra Congregatio pro Ecclesia Orientali respondendum ccnsuif. *Affirmative.*

Since canon 1596 relates to books condemned because of their danger to faith or morals, it is clear that the law applies to Orientals "ex ipsa rei natura", as stated in canon 1.

Canon 1399 enumerates under twelve headings various publications declared to be "ipso iure" prohibited, and in each case it is equally evident that they constitute a danger to faith or morals; hence the law forbidding them is not restricted to Latins.

[1] C.T.S. tr. *Oarhuss over ibe ILartb,* pp. 19 and 20.

## §2. COMMUNICATIO IN SACRIS

### 373.—Principles and Terms

*What is the meaning to be given to "active", "passive", "material" and "formal" when applied to elucidating the principle of "communicatio in sacris"?*

(i) Canon 1258, §1: Haud licitum est fidelibus quovis modo active assistere seu partem habere in sacris acatholicorum.

The communication of non-Catholics in our rites is styled "passive" by some authors, but it is better to avoid an equivocal use of terms, and restrict the word "passive" to the notion discussed in (ii). Active communication of Catholics in non-Catholic rites is sometimes distinguished into that which is material and that which is formal, by "formal" being meant an internal and voluntary approval of the rite or sect. But, since an action of this kind is practically indistinguishable from "formal heresy or schism", it presents no casuistical problem whatever. The distinction, moreover, is not a happy one, since it might lead one to deduce that a Catholic who dissociates his mind from all intention of worshipping God, and *a fortiori* from all adhesion to heresy or schism, may be allowed to take an active part because his share is merely "material". This would be a wrong deduction to draw.

The intrinsic wrongness of active participation in the religious rites of a false religion essentially consists in the external denial of the Catholic faith, which is implied in the action. The meaning of "active" is that described in canon 2259, §2: "... quae aliquam secumferat participationem in celebrandis divinis officiis". This is always forbidden, even though there may be no scandal, no danger to one's own faith, no internal act of worship, no internal approval of heresy or schism. "Ratio est quia eiusmodi assistentia aut panem eu tus improbandi constituit, aut, prout hic sumitur, cooperationem proximam ad talem cultum involvit."[1] "Etiam absente negatione fidei huiusmodi communicatio prohibetur . . . quia saltem aliqua externa approbatio cultus haeretici in tali communicatione includitur."[2]

Therefore, every kind of active participation in a purely religious rite is always forbidden, no matter what the motive or reason, e.g., playing the organ or singing in the choir "etiam sola lucri ratione". Cf. *Propaganda,* 8 July,1899.

On the other hand, without entering upon the paths of casuistry, it is evident that, if the communication falls short of being an active part in a purely religious rite, it may be permitted for proportionate reasons.

(ii) Canon 1258, §2: Tolerari potest praesentia passiva scu mere materialis, civilis officii vel honoris causa, ob gravem rationem, ab Episcopo in casu dubii probandam, in acatholicorum funeribus, nuptiis similibusque solemniis, dummodo perversionis et scandali periculum absit.

Granted that the action is not of the character described in (i), it is not intrinsically wrong, and its lawfulness, in any given instance, can be deter-

[1] Woutcrs, *Tbeol. Moralis,* 1, §500.
[1] Prümmcr, *Tbeol. Moratis,* I, §526.

mined by an application of the ordinary doctrine concerning the *voluntarium indirectum,* or the double effect of an action. The second, or indirect, effect is the danger of perversion to the Catholic and, what is much more likely to occur, the danger of scandal to others. If either of these dangers is grave and proximate, it is hard to discover any reason that would justify even passive presence. But these dangers can, with little difficulty, be made more remote. All that is then required is a proportionately grave reason. Hence the practical impossibility of providing a solution which is applicable to all and sundry. Each case must be solved on its own merits: "Ex quibus dictis sequitur, ut non liceat inferre e.gr. Visitatio ecclesiae protestanticae licita est in tali loco et tali personae: Ergo idem licitum est cuilibet et in quolibet loco. Prudentis viri et praesertim Episcopi aut confessarii est judicare, num in casu particulari adsint omnes condiciones necessariae ad licitam reddendam aliquam communicationem cum haereticis."[1]

Passive assistance means taking no active part. We arc of the opinion that the act of rising and sitting with the rest of the congregation is not to be considered an active part. Once it is decided that a Catholic may lawfully be present at a non-Catholic service, it is extremely difficult to be seated all the time without appearing ill-mannered. The manualists do not usually discuss this point, but Archbishop Kenrick writes in his *Moral Theology,* tract xiii, n. 33: "· · · genua flectere non videtur esse fidei negatio; intelligitur enim fieri humanitatas causa (dummodo illud aliquoties fiat)". It is forbidden to join in the prayers or singing or to perform actions such as serving the minister.

The important point, and one to which the Holy See habitually refers in solving doubts, is the necessity of avoiding scandal. This is the point to be examined, before coming to a conclusion in individual cases, rather than a casuistical peering into the distinction between active and passive, civil and religious communication. Even when it is judged to be remote, it must be weighed and considered in relation to the grave reason alleged in justification of passive presence. For example, a graver reason is required in the case of a prominent Catholic than in the case of an unknown person; a graver reason in a small country district, where the actions of everyone are scrutinized and discussed, than in a town where no one cares very much what people do or where they go; a graver reason for a recent convert, owing to the danger of perversion, than for a "born" Catholic.

All the clergy are familiar with the maze of casuistry born of this toleration, and the phrase *dummodo,* etc., has almost ceased to have any meaning: it is indulgently assumed that there is never any danger. But when we hear of someone who favours Catholics joining in non-Catholic worship, c.g. by taking part in the prayers or hymns, on the ground that there is no difference between this and attending a funeral, we begin to sec the force of the clause *dummodo.* Passive presence at a funeral is indeed permitted by §2 of the canon. But a Catholic may never join actively in the prayers at such a function; any active part ("quovis modo") is absolutely ruled out by §1 ; and the faithful who are unable to perceive this distinction should never attend any non-Catholic function since in their case there is definitely danger of scandal or perversion.

1 Prümmcr, *loc. di,'* $527.

## 374.—United Worship—Common Ground

*Could it not be said that a united corporate act, in which no particular body takes the lead, is not forbidden by the law against "communicatio in sacris", since the service is not that of a non-Catholic sect but is merely one which unites the worshippers on a basis which all share in common?*

The answer must, in our view, be that the only kind of public corporate worship in which Catholics may take an active part is that which is indisputably Catholic worship. For any corporate act of religion, united public prayer for example, presupposes that those who join therein share a common religious faith or conviction, which could only mean that, in spite of the unhappy divisions of Christendom, there are a few simple and fundamental doctrines (such as the divinity of Christ) which, it is alleged, claim the adherence of all, and therefore provide a basis upon which all may worship God as one body.

But this is precisely the contention which the Holy See has consistently and unequivocally rejected, as may be seen in such documents as the Instruction of the Holy Office, 16 September, 1864, addressed to the English bishops on the "Association for the Promotion of the Union of Christendom",[1] endorsed more recently for America, 4 July, 1919, and again, 8 July, 1927, in connection with "The World Conference on Faith and Order" at Lausanne. In the encyclical *Mortalium Animos,* 6 January, 1928, the Fundamentalism on which all these efforts to obtain agreement amongst Christians was based is explicitly condemned. It is a grievously difficult thing for others to understand that the only kind of unity which the Church contemplates is the submission of all separated communities to her authority. The Bishop of Chichester stands out as a theologian who thoroughly appreciates our position with a sympathetic insight which in others is too often lacking; he understands that "the position of the Church of Rome is different from that of any other Christian communion".[2]

Collaboration with non-Catholics is desired by the Holy See, not indeed for the purpose of seeking agreement on a minimum of fundamental revealed doctrine, nor with the idea of communicating with them in religious worship as the outcome of basic agreement, but within the sphere of the natural law,[3] particularly in its social applications as taught during the last fifty years in a series of papal encyclicals. It was within these limits that the joint letter to *The Times,* 21 December, 1940, appeared over the signature of His Eminence Cardinal Hinsley, together with those of other Christian leaders, inaugurating a new effort towards collaboration between Catholics and non-Catholics, which has been, and will continue to be, most fruitful in results.

Speaking at Birmingham, 22 June, 1941, as reported in *The Tablet,* 5 July, His Grace the Apostolic Delegate gave a timely warning: "It seems to me essential," he said, "that the use of the term *common ground* by the Holy Father should be well understood as having no connection with any sur-

1 *Fontes,* n. 979. Cf. Ward's *Life of Wiseman,* II, p. 477 *seq.,* and Purcell's *Life of Manning,* II.xiii, p. 272 "<1·

2 *Christianity and World Order,* p. 115.

3 See Q. 583.

render of dogmatic principle or with the error of 'fundamentalism'. Yet while that danger does exist it is certainly not a valid reason for abstaining from common action and from taking our place on that common ground of which the Pope speaks. . . . While dogmatic differences are wide and deep and may remain so for a long space of time, yet the link which binds all children of God in love of the Father and Creator, and of our brethren created by God, in the great human family, will enable us to find agreement on the social teaching of the Catholic Church, and in this love of our fellow man we may be led to find a great harmony in belief."

This refusal to join publicly in prayer with non-Catholics has always been traditional in this country, and was well explained by Cardinal Bourne in his Lent Pastoral, 1924: ". . . he (the Catholic) can well understand that those whose belief rests on religious opinion should be glad to come together in a service which avowedly makes no claim to oneness of religious faith. But his sense of loyalty to the definite faith that he holds and professes, his intimate sense of the absolute sincerity which God's worship claims, compel him, it may be with keen human regret, to stand aside. For he has been taught . . . that for men to use the same formulae in their prayers to God, while professing widely differing religious opinions, is legitimate, indeed, for such as do not claim inerrancy for their convictions, but unlawful for all who attach a divinely revealed significance to the prayers which they utter in harmony with the definite and unhesitating faith of their minds and hearts." This pastoral was reproduced with strong commendation in *I'Osservatore Romano,* 6 March, 1924.

The Catholic position was restated by the Holy Office, 5 June, 1948, as follows in *I'Osservatore Romano,* 6 June, 1948: Cum compertum sit variis in locis, contra Sacrorum Canonum praescripta et sine praevia S. Sedis venia, mixtos conventus acatholicorum cum catholicis habitos fuisse, in quibus de rebus fidei tractatum est, omnibus in memoriam revocatur ad normam canonis 1525, §3 prohibitum esse, quominus his conventibus intersint, sine praedicta venia, cum laici, tum clerici sive saeculares sive religiosi. Multo autem minus catholicis licitum est huiusmodi conventus convocare et instituere. Quapropter Ordinarii urgeant, ut haec praescripta ab omnibus adamussim serventur.

Quae quidem potiorc jure observanda sunt, cum agitur de conventibus, quos "occumcnicos" vocant, quibus catholici, sive laici sive clerici, sine S. Sedis praevio consensu, nullo modo intéresse possunt.

Cum vero, tum in praedictis conventibus tum extra ipsos, etiam actus mixti cultus haud raro positi fuerint, denuo omnes monentur quamlibet in sacris communicationem ad normam canonum 1258 et 731, §2, omnino prohibitam esse.

## 375.—United Prayers

*Is a Catholic boy allowed tojoin in the nightprayers led by a non-Catholic lay club leader, in a non-Catholic club? Is a Catholic leader allowed to read the prayers or, at least, assist at them in a non-Catholic club of which he is an officer?*

We have heard it maintained that both the above practices are justifiable at least in the circumstances of the present time, when all Christians arc

trying to present a united front against the forces of unbelief. If they are justifiable it means that a momentous change will be introduced, both in the principle underlying the prohibition of *communicatio in sacris* and in the practice which Catholics in this country have always follow'ed in the past. It is our opinion that no private individual, whether priest or layman, should introduce this change; it is a matter for the judgement and direction of the local Ordinary. On the principles which are at present our rule of guidance, principles summarized in canon 1258, the answer to the above questions is that a Catholic may not join actively in these night prayers; if he cannot avoid being present, his passive assistance may be tolerated as directed by canon 1258, §2, and with the safeguards mentioned therein. The Catholic leader's "assistance" is provided for in this answer. He may, however, as leader, recite a formula of prayer which is indisputably a Catholic formula, e.g. the night prayers from the *Manual of Prayers.* It may be true, indeed, that the non-Catholic formula, e.g. that contained in the *Book of Common Prayer,* is orthodox in its expressions, but it remains unlawful for a Catholic publicly to use a form of worship not authorized by the Church.

*May a Catholic teacher employed in a non-Catholic school take part in the united act of worship at the beginning of each day?*

Assuming that the formula of prayer is orthodox in its expression, it is maintained by some that, in the circumstances of the present day, an active part in such common acts of worship is justifiable. Our own opinion, based on the principle of canon 1258 and on the traditional practice of the faithful in this country, is that a Catholic may not participate actively in these joint acts of public worship with non-Catholics; for appropriate reasons passive presence may be tolerated as directed in §2 of the same canon. If it is thought that the time has come for a modification of this law and practice, the matter is for the judgement and direction of the local Ordinary.

*Some think that a united act of worship is, or should be, permissible when it is merely incidental to the purpose of the meeting, e.g. when Catholics and non-Catholics meet to discuss some social question.*

It must be conceded that *communicatio in sacris* docs admit of smallness of matter which may sometimes be so slight as to be negligible—*de minimis non curat lex*—and it may often be advisable to leave Catholics in good faith about trifles. In our opinion, however, a united prayer is a corporate act of worship even in these circumstances, and is subject to the same principles.

## 376.—United Prayers: A Milder View

*The theologians teach that prayer with non-Catholics in private is not forbidden, and it would seem that this applies to united prayer by all the children, for example, in a non-Catholic school. It is sometimes extremely difficult for the Catholics to withdraw or remain passive.*

Assuming that the prayers or hymns in question are orthodox in expression, as they usually are, it is agreed that private prayer with a non-Catholic is permitted, the reason being that there is usually no scandal or danger of perversion, and that the action being private cannot be construed as external denial of one's faith, on the principle outlined in Q. 373, (i). Thus, prayer with a dying person is permitted, or grace before a family meal.

It may be difficult to define exactly what is a public assembly, but it seems to us that the examples discussed in Q. 375 arc public and therefore forbidden. Our whole tradition is against such practices, except on a principle of tolerantly leaving people in good faith, and it is not for individuals to modify it on their own authority. Otherwise one cannot predict what it will lead to. Children accustomed to common religious worship at school with non-Catholics will not easily understand why it is forbidden out of school; nor will they readily perceive any difference between worship in a school and worship in a non-Catholic church or chapel.

However, there is a very simple and obvious method of coming to a decision, namely by obtaining the sanction of the local Ordinary. A letter in the Catholic press of 11 October, 1946, stated that a bishop had sanctioned the practice of starting the school day with an informal (united) prayer at the morning assembly: it was regarded as in the same category as family grace before meals. With this episcopal sanction everything of course is in order within the diocese, and some modification of our traditional attitude will usually be welcomed by Catholics.

We endorse a conclusion of Mr Beales in the *Sword of the Spirit*, 8 July, 1943: "Where the Bishop allows the Lord's Prayer led by a priest, or a joint hymn, so be it. Where the injunction is silent prayer, or no prayer at all, so be it."

## 377.—Border-Line Cases

*Is a Catholic permitted to assist at non-Catholic worship* (λ) *in the official capacity of mayor of a town ; (b) as bridesmaid at a wedding; (f) at an Anglican "Requiem"?*

*(a)* Even though it may be argued that his presence is passive and due to his civil office, the scandal to the faithful is so great that the bishops have issued a solemn monition against this practice: "The Archbishops and Bishops of England and Wales arc concerned at the serious departure from the established tradition and practice of conscientious Catholics in this country, which is involved in the attendance of Catholic mayors and like officials at non-Catholic religious services. They earnestly appeal to all to whom it may apply to adhere faithfully to the well-established tradition of the past."[1]

(t) The bridesmaid is always a difficulty, and on the border-line, because the part is active. Some authors allow it on the supposition that the assistance is civil rather than religious. But one feels certain that these writers do not contemplate a bridesmaid actively assisting at an Anglican "Nuptial Mass" when the whole rite is deeply religious.

(r) Toleration of a Catholic's presence at the actual funeral service is not necessarily extended to a memorial or anniversary service, for there is usually

[1] *Low Week Meeting,* 1924.

no parity of reason to justify it. In our opinion, the presence of Catholics at a "Requiem", in an Anglo-Catholic church, is attended by such scandal that it cannot be justified except on the part of relatives and close friends attending the actual funeral.

A judgement on the lawfulness of these and other cases turns, firstly, on whether the participation is active and religious; secondly, on a right application of the *voluntarium indirectum* principle, particularly with regard to scandal. The bishops have issued a warning against (λ), because there is no proportionate reason justifying the scandal. The conscience of the person, assisted by a confessor's advice, must solve (fi) and (r), having regard to all the circumstances.

## 378.—Radio Sermons

*May Catholics listen to wireless services, sermons and religions lectures given over the radio by non-Catholics?*

(i) Whatever conclusion one arrives at, it seems to us that, if the practice is forbidden, it will not be because the act is *communicatio in sacris,* as explained in the familiar canon 1258, which forbids active assistance and tolerates passive assistance for proportionate reasons. For one is not "present" at a non-Catholic service when listening to it over the wireless, exactly as one is not "present" at a Mass which is broadcast. It is agreed that the law of hearing Mass is not observed by listening to a broadcast; it must also be held that the law prohibiting *communicatio in sacris* is not broken by listening to non-Catholic services. The implied denial of one's own religion in assisting externally at the rites of another religion is clearly not verified unless one is physically present; likewise the danger of giving scandal is not verified.

(ii) We arc left, therefore, with the last reason for which assistance at heretical sermons is forbidden, namely the danger of perversion, and this is the only point to be examined in deciding on the lawfulness of listening to wireless religious addresses. The practiceis, in principle, forbidden because of this danger, the obligation of avoiding dangers to one's faith being of the natural law. It is open to local ordinaries, because of this common danger to the faithful, to prohibit listening to wireless non-Catholic religious addresses, though we do not know of any instance where this has been done. Usually, therefore, each case will have to be decided on its merits. For it was the teaching of the authors, long before wireless was invented, that listening to non-Catholic sermons could be permitted for appropriate reasons, provided the danger of perversion was non-existent. For the well-instructed Catholic there is no danger of perversion but for the ill-instructed the danger is great. We think, accordingly, that individuals must form their own conscience on the matter, and seek, if necessary, a confessor's advice, except in places where the Ordinary has directed the faithful not to listen to these wireless addresses.

## 379.—Ministration of Schismatic Priest

*Is it obligatory, or at least permitted, for a Catholic to assist at Mass celebrated by an orthodox schismatic priest in order to fulfil the Sunday precept I It is supposed*

*that there is no Catholic church in the district and that attendance is not accompanied by any scandal or danger ofperversion.*

It is not permitted, except in the extreme necessity arising from danger of death, to communicate actively in schismatic rites. Material or passive presence is permitted, for appropriate reasons, and with the necessary precautions, exactly as it is permitted, from canon 1258, §2, at the religious rites of any non-Catholic body. Canon 1258, § 1, contains a general prohibition: "Haud licitum est fidelibus quovis modo active assistere seu partem habere in sacris acatholicorum." Canon 21 : "Leges latae ad praecavendam periculum generale, urgent, etiamsi in casu peculiari periculum non adsit." The conclusion must be that, in a case of this sort, the law of Sunday Mass need not be observed.

Moreover, quite apart from any positive laws on the subject, it is in reality ruled by another consideration. Formal communication in non-Catholic rites implies, in some measure, an implicit external denial of Catholic faith or unity, and is, therefore, forbidden, even though there is no scandal and no danger of perversion. The suspension of this rule in danger of death is only apparent, for the circumstances are such as to preclude any approval, even external, ora non-Catholic sect. The Church, in addition, gives faculties to any priest *inpericulo mortis*^ and by this grant of jurisdiction is presumed to have lifted the ban against communicating with him.

## 380.—Assistance of Non-Catholics at our Functions

*Is there a positive prohibition against non-Catholics taking an active part in the Corpus Christi procession?*

*S. Off.* 20 November, 1850; *Propaganda, Collectanea* n. 1840 (altera cd. n. 1055): Se sia lecito porgere torcc o lumi acccsi a qualsivoglia persona ctcrodossa che ami assistere aile nostre funzioni? *Pesp.* Negative et ad mentem. La mente è chc sc, attese lc particolari cicostanzc, non possono escludcrsi da tai cerimonia le sole persone cterodossc, se n'escludano eziandio i laici cattolici.

The laws against non-Catholics attending our rites are far less strict than those which forbid Catholics to assist at non-Catholic religious worship, and they arc not always logically coherent: thus one may, for proper reasons, employ a non-Catholic organist who is certainly having an active part in the function, yet in principle, as in the above reply, active participation is not permitted. The reason, apart from those actions which are of their nature forbidden, such as a non-Catholic acting as sponsor at baptism, is the necessity of avoiding the danger of scandal: this would be, particularly in these days, the danger of religious indifterentism, which might affect both Catholics and non-Catholics. Walking in the procession, without performing any office therein, such as server or canopy bearer, should in our view be regarded in the same light as rising and kneeling with the congregation. It is not, properly speaking, an active part in the rite, and is not forbidden, so far as we can discover, by any Roman decision.

*Why is the priest instructed to take care that no heretics are present wbtn be administers confirmation to those in danger of death?*

Canon 2259, §1: Excommunicatus quilibet caret iure assistendi divinis officiis. . . . §2. Si passive assistat toleratus, non est nccessc ut expellatur; si vitandus, expellendus est, aut, si expelli nequeat, ab officio cessandum, dummodo id fieri possit sine gravi incommodo. . . .

*Propaganda,* 4 May, 1774, *Fontes,* n. 4565 ; *PJtnale Romanam,* Appendix *"De Confirmatione"; S.C. Sacram,* 14 September, 1946: Cavere debet ne coram haereticis vel schismaticis, ct multo minus eis ministrantibus, confirmet.

The phrase excluding the presence of heretics occurs at the end of the rite in *Fontes,* n. 4565, and as a concluding rubric in the text of the Roman Ritual. In the 1946 document it is placed as an introductory rubric, the reason being that the 1946 faculty is limited to those in danger of death from sickness, and will therefore normally be used in a sick-room, whereas the rite in the Roman Ritual is for priests whose faculty includes confirming in churches and who will rarely use it in sick-rooms; when they do so the concluding rubric gives directions.

The exclusion of heretics as servers offers no difficulty, the rule being in accordance with many other directions of the Holy See.

With the reservations, however, of canon 2259 we are accustomed to welcome the passive presence of non-Catholics at our rites, provided there is no danger of scandal (indifferentism), and usually there is none. If the sacrament of confirmation is an exception which requires a stringent exclusion of non-Catholics, we should expect to find some indication of this rule whenever confirmation is normally administered in churches, whether by a bishop or by a priest enjoying the faculty. On the contrary, the rubrics of the Roman Ritual expressly mention the exclusion of heretics only when the sacrament is received privately by the sick in their homes. Therefore the reason for this exclusion must be related to these circumstances alone.

The direction is perfectly clear and must be obeyed, but we must confess our inability to discover a good reason for it. One reason may be that, whereas in a Catholic church non-Catholics if present would be a minority, in the sick-room of a recipient who, perhaps, is the only Catholic member of the family, they would be a majority, and the priest would then appear to be presiding at a religious conventicle of heretics. Or, if the family are Eastern schismatics, the precaution may be against their concluding that also in the Catholic Church the faithful arc normally confirmed by priests. More likely, perhaps, the rule excluding non-Catholics from Catholic ceremonies because lacking the right to be present, as in canon 2259, §1, was more rigidly observed in 1774. It was well understood and there was little likelihood ot its violation when sacraments were administered in a church. But a *caveat* seemed necessary for the administration in a private house of the sacrament of confirmation, and the phrase used in 1774 is repeated in the present document.[1]*

The only commentator we have read on this point, Fr O'Connell, C.SS.R.,[2] observes that Jews are not mentioned, and he interprets the phrase

1 For a similar repetition causing a little obscurity cf. *The Clergy Retira,* 1947, XX\ II, 145.

2 *Ecclesiastical Review,* 1947, CXVI, p. 262.

as meaning "before heretics or schismatics who are aware of the rite being administered", thus providing for its administration in a hospital ward, since the patients and nurses would very probably not have this knowledge. Wc think this a reasonable explanation of the word *coram.* We arc also of the opinion that, on analogy with canon 2259, §2, the rule does not bind *cum gravi incommodo.*

## 381.—Private Prayer in Pre-Reformation Churches

*Titins is in the habit of entering the ancient cathedrals of this country, and other pre-Reformation churches now in Protestant hands, when no Protestant service is being performed, and there praying for the return of this country, and of the formerly Catholic shrine, to the faith. He is motived by the facts* (λ) *that this is in itself a good thing; (b) that at least some Catholic worship and reparation are thus offered in the desecrated shrine; and* (r) *that Catholics are encouraged at times to do this, e.g. the annual Catholic visit to the shrine of St Edward at Westminster. On the other hand, he is aware of the possibility of scandal at being seen praying in a Protestant place of worship; also he is afraid there may be some positn t prohibition of the practice, when not specially authorised by authority, as in the above case of St Edward's Shrine. What is to be answered?*

The principle is stated in an instruction of the Holy Office, given for the faithful of Kentucky, 15 January, 1818: An liceat Catholicis adire templa harcticorum? Licere, si adeant merae curiositatis causa, absque ulla communicatione in sacris, in qua talis aditus communiter habeatur pro actu protestativo falsae religionis; quandoquidem sicuti profana aedificia, sic et templa haereticorum adire, est actus per se indifferens; qui non nisi a pravo fine, vel ex circumstantiis efficitur malus. Malus nimirium efficitur: 1. Si quis ea adeat animo adsistendi sacris haereticorum functionibus; 2. vel etiam sine tali animo, si ingressus ipse in haereticorum ecclesias aliquam inferat vel inferre videatur cum iisdem haereticis in divinis communicationem, hinc et scandali occasionem praebeat. ... 4. vel utrumque communiter habeatur vcluti tessera unius eiusdemque communionis catholicorum et acatholicorum.[1]

The reply is concerned chiefly with permitting such visits *curiositatis causa,* and I know of no definite instruction which covers exactly the point raised above. But it is clear, both from this text and from other instructions, that what is absolutely forbidden is communicating in the worship of heretics even though the prayers said contain nothing heretical. Therefore, the use of a building is indifferent. The Church even tolerates, for proportionately grave reasons, the use for public Catholic worship of a building which belongs to non-Catholics, or is used alternately by Catholics and non-Catholics, as for example the Church of the Holy Sepulchre in Jerusalem.[2]

Granted its intrinsic lawfulness, the question can be answered by applying the *voluntarium indirectum* principle to each individual case. The point to be examined is whether the possible scandal, or danger of perversion, is compensated by a proportionately grave cause justifying the practice. In the

[1] Fan///, n. 856·
[2] Cf. J. *Off.,* 5 June, 1889; *Fontes,* n. 1119; Q. 686.

case of public Catholic worship in non-Catholic churches the permission of the Ordinary must be obtained, as is done, presumably, in the case of St Edward's Shrine, or in the case of Mass celebrated in the ruins of a monastic church. But an individual may arrive at a prudent decision, if necessary, by consulting a confessor, in determining the lawfulness of private prayer.

If one may consider the generality of cases of this kind, it appears that, whereas it is the exception to tolerate the presence of a Catholic at non-Catholic religious rites, it would be rather the exception to prohibit the practice of private prayer in a pre-Reformation church. For it would only be in exceptional cases that any scandal or danger of perversion would arise. A recent convert, for example, in a cathedral town, should not be allowed to visit the cathedral for private prayer; there is danger of perversion. Likewise no Catholic should use a pre-Reformation church which is now devoted by Anglicans to a close imitation of "Roman" rites; there is possibility of scandal. Similarly, one should not visit a pre-Reformation church situated in one's own parish; there would be danger of giving scandal to the Catholic population. But, apart from such cases, no bad result can usually be anticipated. On the contrary, it is good for the sacred building to be used occasionally by the faithful for whom it was erected, and I believe it is a fairly common practice for the clergy to recite their office in such churches.

## 382.—Oath on a Protestant Bible

*Is if lawful for a Catholic witness in a court of justice to take the oath on a Protestant bible?*

(i) The act of swearing on a Protestant bible cannot be considered a denial of the Catholic faith, or even an implied recognition of the sect whose version of the scriptures is being used. It is simply an outward act of religion, supporting the veracity of the witness by showing reverence to the word of God, whose name is solemnly invoked. The text is, in its substance, the word of God. This is the conclusion given on two occasions in the *Ecclesiastical Review,* XIII, p. 64, and XXVI, p. 345, and also by a writer in the *Semaine Religieuse de Québec,* March, 1955, p. 440. Prümmer is the only manualist, so far as I can discover, who deals with the point: "Licet jurare tangendo et osculando biblia haereticorum, sicut moris est in Anglia."[1] I le relies on a reply of the Holy Office dated 23 February, 1820: "Cum Protestantes officiarii dominentur omnibus tribunalibus, curiis, doganis, publicisque gubernii tum civilibus tum militaribus officiis, modusque jurandi apud eos sit tactus et osculum bibliorum; ubique biblia haeretica praebentur tangenda ct osculanda, solique clero concessum est ut juret admovendo manum ad pectus. 1 loc posito, quaeritur an fideles inquietandi sint de modo qui invaluit tangendi et osculandi huiusmodi biblia. *Resp.* In casu et circumstantiis expositis respondendum esse negative, nempe non esse inquietandos."[2] The careful wording of this text should be noticed. It was given for Quebec, where, apparently, there was no option in choosing some other method of taking the oath, and the answer is in the familiar guarded form that, in the

[1] *'I'heol. Moralis* (1931), I, §526 g.
[2] *Fontes,* n. 8j8.

circumstances, the consciences of the faithful need not be disturbed. It is open to anyone to conclude that the reply bears the sense that the people may be left in good faith, an interpretation which would not necessarily imply that the action is intrinsically lawful. I think it may be concluded, both from the reply and the teaching of the authors quoted, that the action is not intrinsically wrong.

(ii) But not everything which is in itself lawful is also expedient, and to be tolerated everywhere and always. If certain ill effects follow from an action which is in itself lawful, one must refrain from that action unless there is a proportionately grave reason for doing it. The ill effects are, perhaps, in this case not very considerable. But there is always the possibility of some scandal, especially in surroundings where the Protestant bible is regarded as the symbol and sole rule of faith.

Therefore, the correct answer to the question is that a Catholic, in this country and at the present time, should not use a Protestant bible in law courts, because there is not the slightest reason for so doing and his refusal will not usually be attended by any disadvantage. Why then run the risk, slight thought it may be, of appearing to approve an heretical version of the scriptures? There is no reason, because the law of this country permits the oath to be taken on a Catholic bible, and if one cannot be obtained a witness may swear in the Scottish fashion, as provided by Sec. 5 of the Oaths Act 1888. The witness lifts his hand and says: "I swear by Almighty God, as I shall answer to God at the Great Day of Judgement, that I will speak the truth, the whole truth and nothing but the truth."[1]

Far from there being any reason for using a Protestant bible, there seems every reason to the contrary. The matter is often discussed in the Catholic press, and it has become widely known and understood that no Catholic need use the Protestant bible. The refusal to do so is a most excellent profession of faith, stressing in particular the fact that the Church is the official custodian of the scriptures, and the faithful should be encouraged in their objection to the use of a non-Catholic version, an objection that is widely and conscientiously felt. Priimmer states that the practice is lawful "sicut moris est in Anglia", but I doubt whether it can be rightly called customary amongst us. If a question were put to the Holy Office today, asking whether it is lawful to use a Protestant bible in places where an alternative form is allowed, there can be no doubt what the answer would be.

## 383.—Co-operation with Non-Catholics

[F7a 7] *are the principles in this matter and the limits to be observed in co-operating with non-Catholics?*

They are formulated in the "Joint Statement on Co-operation", issued by the Joint Committee of *Religion and Life* and the *Sword of the Spirit,* and published in the secular and religious press, 29 May, 1942. It is the most important document which has been issued since the joint letter, signed by the religious leaders in this country, appeared in *The Times* of 21 December 1940, and its appearance bore testimony to the patience, good will and

earnestness which inspired all parties during the long negotiations which preceded it.

The Bishop of London, chairman of the Joint Committee, described it as follows in his broadcast address, 28 May, 1942, the text of which may be seen in the *Sword of the Spirit* bulletin, 4 June, 1942. "It is not an official pronouncement of any of the Churches concerned, but it has the goodwill of a joint Anglican and Free Church Commission and of the Roman Catholic Church, and it has today been warmly commended by the Archbishop of Canterbury, as Chairman of the Commission of the Churches, and by Cardinal I linsley, as President of the *Sword of the Spirit"* The Catholic press, 5 June, 1942, reporting the reception in London at which the text was issued, noted that "Cardinal Hinsley, endorsing the statement, said that . . . in a few instances the phraseology was not all that he could desire, 'but', he added, 'as it stands I approve it, and I hope we shall see from this time on a great increase of co-operation and a vast amount of help from those who associate themselves either with one side or the other—the *Sword of the Spirit* or the *Religion and L,ife* movement'." The document, therefore, as such, does not enjoy the official character of a statement issued by the hierarchy—for example, that on the justice of the war authorized by all the bishops and printed in the Catholic press, i6 September, 1959. On the other hand, it was "warmly commended", "endorsed", "approved" by the Ordinary of the diocese in which it was issued, and has the implied approval of all those Ordinaries who have welcomed the *Sword of the Spirit* into their dioceses. To proceed from the familiar to the unfamiliar, the document seemed to us to have the character of a text issued not only with the Ordinary's *imprimatur* but with his commendatory preface as well: neither an *imprimatur* nor a commendator}' preface necessarily implies that everything in the text is positively approved.

Co-operation means acting jointly for a common end or object: it is the object which specifics a movement, not the subjective status, condition or motives of the co-operators. For example, local residents, non-residents, socialists and conservatives may take common action for preserving the public right to a footpath, even though their motives for so doing may or may not be identical. Therefore, in defining or clarifying the limits of a joint movement, it is the object *{finis operis}* which must be examined, not the co-operators' beliefs or motives *{finis operantis}* which may or may not be shared in common.

The joint statement recently issued strongly supports the contention of many people that the object of co-operation between ourselves and non-Catholics is to be restricted, for the time being at any rate, to the truths of natural law. Notwithstanding the employment of such terms throughout the document as "Christian tradition", "Christian revelation", "Christian teaching and witness", "organized Christianity", a careful reading of the text makes it plain that the joint influence of all these Christian things and the joint activities of all the people accepting them are to be directed, as in point (1) to "social, economic and civic problems", or, as in point (2), to "common action on broad lines of social and international policy". "Linked by this Committee," the document concludes, with admirable precision, "the two movements will work through parallel action in the religious, and joint action in rhe social and international field." It may well happen, after a period of successful co-operation within the sphere of the natural law, that

the way will be paved for some measure of agreement on objects specifically Christian, though there are imposing difficulties in the way.

There is objective equality in co-operating with non-Catholics for a recognition of the natural law, since this common ground is approachable by the light of unaided reason. To go beyond these limits into the realm of faith, as Dr McReavy very clearly proved in his contribution to *The Tablet,* 25 May, 1942, can only be justified, if at all, by stressing the subjective duty of non-Catholics to follow a conscience which is invincibly erroneous. Even so, a Catholic must hold that the Church alone possesses the right to speak for Christ, and the question then arises whether non-Catholics can reasonably be expected to collaborate for religious purposes with those who make such an exclusive claim.

The restoration of the natural law, therefore, is the first, the most obvious, and the least controversial object on which co-operation with non-Catholics is likely to be successful. That it is a restoration of the old, not a novel experiment, should always be remembered. The Pope in *Summi Pontificatus* reminds us that the reason why these principles of natural law have been abandoned in Europe is to be traced to the widespread defection from the Church due to the principles of the Protestant Reformation, a truth which is often confirmed by non-Catholic writers. Mr Kenneth Ingram, for example, in a contribution to *A Christian Basis for the Post-war World,* states: "Since the Reformation, Christianity has tended in many respects to promote nationalism, and the Roman Catholic Belloc school are correct in pointing to the sixteenth century as the period of dissolution which marks the beginning of the rival imperialisms which have led up to the present disaster."[1]

The Church is, in fact, the guardian of the natural law and, under the guidance of the Holy Spirit, teaches it infallibly to the faithful. But since both Catholics and non-Catholics can appreciate its truths on grounds of natural reason alone, there is every reason to hope that both will greatly benefit by collaboration and the study it involves.

## §3. THE Vth COMMANDMENT

### 384.—Assurance of Death

*How do the moralists justify opening the arteries of a "deceased" person who has left instructions to this effect in a will in order to avoid the possibility of being buried alive?*

None permits this operation except in cases where the person is undoubtedly dead, since otherwise it would be unjustifiable homicide. The action, if performed on a dead body, is lawful either for the purpose of carrying out the will of the deceased or for allaying the unreasonable anxieties of relatives. As long as there is any probability of life not being extinct, it is obviously wrong directly to hasten death by performing a lethal operation, or even by burying the person. The teaching of the manualists will usually

[1] S.C.M. Press, 1942, p. 44.

be found s.v.*punctio cordis, e.g.* Noldin II, §339 (193 5): "Medico vel chirurgo certc non licet cor aut venam secare, nisi ex indubiis signis mortis iam secutae certam persuasionem habeat, cum utraque actio ex sc apta sit, quae homini reipsa apparenter tantum defuncto inferat mortem. Quodsi ex signis mortis indubiis hanc certam persuasionem sibi comparavit, ei licet cor aut venam pungere ad liberandos a metu et anxietate cos qui punctionem petunt. Si enim licet hominem tumulo recondere, beet etiam eius cor vulnerare."[1]

## 385.—Caesarean Section on Dead Mother

*The moralists teach that, in principle, this operation is obligatory for the purpose of baptising the infant, even though it is not viable. Bat they do not explain how to meet the objection that its extraction, in these circumstances, hastens death, and is morally the equivalent of causing abortion. What is the solution of this difficulty?*

Canon 746, §4: Si mater praegnans mortua fuerit, fetus ab iis ad quos spectat extractus, si certo vivat, baptizetur absolute; si dubie, sub conditione.

The operation might seem, at first sight, to be unlawful, since the action will hasten death, and it is clearly irrelevant to argue that it is going to die in any case, or that the necessity of administering baptism compensates for whatever irregularity there is in causing what would be called abortion were the mother alive. Ferreres is one of the few writers who apply their minds to this little problem: "Actio ilia est directe occisiva fetus, quando fetus est in utero matris viventis, *Conc*\ quando fetus est iam extra uterum, vcl in utero matris mortuae, *Neg*.—Ratio distinctionis est, quia cum fetus huiusmodi est involutus secundinis in utero matris viventis, est in loco et modo in quibus *ùnice* vivere potest, ideoque directe illis privare est illum directe et per se occidere; si vero est extra uterum, vcl in utero matris mortuae, tunc discindere secundinas, vel eum ex utero extrahere, est ponere fetum in loco et modo in quibus *unice* vivere potest, ideoque tunc illae actiones non sunt directe occisivae, sed directe salvificae fetus, cum fetus, mortua matre, vel iam extra matris uterum, vivere non possit nisi separatus a matre et discessis secundinis. Quod vero *ille* fetus adhuc extra maternum uterum vivere non possit, hoc est *per accidens,* sicut e contra, *virente matre, per accidens* est fetum in utero moriturum."[2]

## 386.—Indirect Abortion

*What is the state of theological opinion on the lawfulness* (7) *of excising a cancerous womb containing an unviable fetus; (jï) of removing an ectopic fetus?*

(i) A discussion between Vermcersch and Gemelli on the subject of abortion in the pages of *Nouvelle Revue l biologique* has been reprinted as a separate brochure.[3] The question is whether the abortion, which neccs-

[1] Cf. also Marc-Gcstcnnann, I, §740; Tuminolo-Iorio, II, §213.

[2] *Tbeol. .Mora/U,* II, §544.

[3] *De /'avortement indirecte. Controverse entre R. P. Cemetii et le* R. *P. Vermeerscb.* 1953.

sarily accompanies the excision of a cancerous womb, is direct or indirect. If it is indirect, it may be tolerated for grave reasons, on the ordinary principle of the double effect, particularly if the embryo can be baptized. It is supposed, of course, that the embryo is not viable. Vermcersch holds that the abortion is indirect, Gemelli that it is direct, for, according to the latter, the bad effect is a means to the good eflect; the surgeon must first ligature the surrounding arteries and veins, and this action results immediately in the death of the fetus.

This rather severe doctrine is certainly not the common teaching of moralists, and Vermcersch cites numbers of authors in favour of the milder view.

The theory of the double effect, of which this case is an interesting practical application, in enunciating the principle that the immediate effect must be good, should be understood to mean that the good effect is not obtained *mediante effectu malo.* Provided the bad effect is not a means to the good effect, *ex parte finis operis,* it docs not matter if the bad effect actually takes place before or after the good effect. Now, in this case, the death of the fetus is certainly not a means for securing the good effect, the excision of the cancerous womb. Quite apart from the extrinsic authority of theologians, it appears to us that the abortion is certainly indirect, and may be permitted *ceteris paribus.* The doubt arises, in the mind of Gemelli, because he is, perhaps, too much occupied with the details of surgery. At least we may say that the action is to be permitted as long as it is not clearly forbidden: the surgeon who is trying to be loyal to the ethical teaching of the Church is deserving of every consideration, and we should not put insupportable burdens upon his shoulders.

(li) In some cases it is extremely difficult to distinguish between direct and indirect abortion, notably in the problem of the ectopic gestation (pregnancy of a fetus or embryo outside the womb). It is not permitted to shell out the fetus, which would be a direct attack upon it, nor is this the treatment commonly recommended by obstetricians; but there is substantial authority for regarding a pregnant tube as being in a pathological condition, and consequently for removing the whole lump, exactly as in the case of a diseased womb. Fr Davis, S.J., has made a special study of this subject and has successfully defended the view, favoured nowadays by most theologians, that its removal is lawful.1

The right solution of these and similar cases turns on applying the principle of the "double effect" *(voluntarium indirectum, voluntarium in causa').* It is lawful to perform an operation from which the death of a fetus indirectly follows, provided that the immediate object *{finis operis)* is good or indifferent, that the intention is good and that there exists a proportionately grave reason. In *Casti Connubii,* the condemnation of therapeutic abortion, it will be noticed, is qualified by the word "direct", although the encyclical contains no discussion of the casuistical questions involved in the word "indirect".

It is clearly not abortion if the fetus is viable after removal from the womb, and modern medical practice frequently saves the lives of both mother and infant by accelerating birth before full term.

If the fetus is dead, its extraction is obviously lawful; if it is not certainly

l .*Marat and Pastoral Theology,* II, p. 171.

alive, there is some conflict of opinion, but the problem is not a very practical one in modern times—whether it is alive or not can usually be detected. "Si foetus non certo sed probabilius est mortuus, tunc etiam complures auctores recet docent, licitam esse craniotomiam ad salvandam matrem, quia mater vivens non debet vitam suam dare pro foetu probabilius iam mortuo."[1] The writer is speaking of craniotomy, but the moral principles apply similarly to abortion and to the various methods by which it is effected. Nor is the question concerning the time of the infusion of the soul relevant to our present discussion.

The distinction between *foetus animatus* and *inanimatus,* which used to have some importance in mediaeval canon law, has now disappeared. Whether the fetus has a soul or not, it is potentially a human being. Cf. Denz., n. 1185 and canon 747: "Curandum ut omnes foetus abortivi, quovis tempore editi, si certo vivant, baptizentur absolute."

## 387.—Therapeutic Abortion

AL·)' *it not be said that therapeutic abortion is sometimes permissible?*

On the supposition that the fetus is alive it is never lawful directly to cause its destruction, but it is lawful, for the purpose of saving life, to remove diseased organs even though the death of the fetus follows as an indirect effect of this operation. Certain members of the medical profession will probably fail to see very clearly why indirect abortion may be permitted for grave reasons, and direct abortion forbidden, since the death of the fetus results in both cases. But the distinction is a vital one in Catholic moral theory and practice.

The really difficult problem arises not in cases which arc evidently criminal abortion, no matter how thinly veiled under the pretext of medical necessity, but in cases such as pulmonary tuberculosis which reputable medical books mention as indicative of therapeutic abortion. Notwithstanding the fact that the alleged necessity is occasionally called in question, the truth appears to be that, in some few cases at any rate, the refusal to terminate a pregnancy would be reckoned by the medical profession as negligence. The situation is plain enough and it is not complicated by any notion of the abortion following indirectly or mediately from some other lawful action. It is direct abortion that is contemplated and this can never be lawful.

The clear statement in *Casti Connubii* can only be appreciated by one who is aware of the force of the word "direct" which the Holy Father uses: "As to the medical and therapeutic indication to which, using their own words, we have made reference, venerable brethren, however much we may pity the mother whose health and even life is gravely imperilled in the performance of the duty allotted to her by nature, nevertheless what could ever be a sufficient reason for excusing in any way the direct murder of the innocent? This is precisely what we arc dealing with here. W hether inflicted upon the mother or upon the child, it is against the precept of God and the law of nature: 'Thou shalt not kill.' The life of each is equally sacred, and no one has the

[1] Priimmcr, *TbeoK Moralis,* II, §136.

power, not even the public authority, to destroy it. It is of no use to appeal to the right of taking away life, for here it is a question of the innocent, whereas that right has regard only to the guilty; nor is there here question of defence by bloodshed against an unjust aggressor (for who would call an innocent child an unjust aggressor?); again there is no question here of what is called the 'law of extreme necessity' which could even extend to the direct killing of the innocent. Upright and skilful doctors strive most praiseworthily to guard and presen·c the lives of both mother and child; on the contrary', those show themselves most unworthy of the noble medical profession who encompass the death of one or the other, through a pretence at practising medicine or through motives of misguided pity."

The attitude of the priest or of the professional theologian towards members of the medical profession, whether doctors or nurses, contrary to what they may imagine to be the case, is one of very deep sympathy which expresses itself as helpfully as possible by endeavouring to discover a *modus vivendi,* whilst preservingrintact the moral teaching of the Church, in cases where their professional eputation or even their employment in hospitals is at stake. In the last resort some material loss may have to be faced rather than offend against the law o^f God in so grave a matter. The issue between causing or not causing d rcct abortion is, at all events, a matter which has wider interests than purely medical ones. We find it hard to believe, though we arc open to persuasion, that the professional reputation of a doctor would gravely suffer, in the long run, if he pleaded these wider interests, religious or legal or social or moral or whatever they may be, in justification of refusal directly to cause an abortion. Cf. *Cahiers Laënnec,* 1946, 3.

The lay mind, untrained in Catholic ethical theory, cannot usually perceive why the instances we have discussed in Q. 386 do not also justify *direct* therapeutic abortion; their reasoning is from particular case to particular case, instead of from a general principle to a particular deduction. The justification of indirect abortion, with its accompanying distinctions, is often condemned as a contemptible exercise in hair-splitting, which can have no place where a human life is hanging in the balance. But every law, human as well as divine, needs applying to concrete cases—*qui bene distinguit bene intelligit,* the judgements, for example, given by an appeal court, on which a human life may depend, often turn on the finest of legal distinctions which to a lay person are hair-splitting. Catholics who cannot understand the reason why (direct) therapeutic abortion is condemned must accept it solely because the Church teaches it, and this they are certainly bound to do.

As in other similar instances, it may sometimes be prudent to leave persons in good faith, if they arc ignorant of the teaching of the Church and it is judged that they would not accept it, as Prümmer[1] very wisely observes. But the conditions for leaving in good faith arc rare in these days, since the teaching of the Church is known to most people. In this connexion, it should be remembered that the lawfulness of craniotomy was defended as probable by Ballerini and other Roman theologians,[2] who relied chiefly on the view that the fetus could be considered as an unjust aggressor. Their arguments are still advanced *mutatis mutandis* by non-Catholic ethical writers attempting to justify therapeutic abortion, but they were never endorsed by

[1] *Tbeol. Moralis,* II, §156.
[2] *Opus Morale,* II, pp. 647-55; Eschbach, *Disputationes,* II, Disp. v.

the generality of Catholic theologians and were eventually rejected by the Holy See.[1]

## 388.—Co-operation in Abortion

*I hate hem a it stated, as a general ride ofguidance, that a Catholic nurse, assisting ata surgical operation, may with a good conscience do anything she is ordend to do by doctors or other superiors, without concerning herself with the morality of the action. Is this a safe anda recognised ride of conscience for the nursing profession? I hare in mind assisiance at an operation directly causing abortion.*

We may remember the words of Ecclesiasticus xxxviii, 1-4: "Honour the physician for the need thou hast of him: for the most High hath created him. For all healing is from God, and he shall receive gifts of the king. The skill of the physician shall lift up his head, and in the sight of great men he shall be praised." It was among the counsels of St Vincent de Paul to the Sisters of Charity that, when nursing the sick, they should carry out absolutely everything ordered by the doctors, who were more learned than they and who "were greatly honoured by God in this text of holy writ. The same counsel, or rather precept, is usually to be found amongst the constitutions of religious orders, in the section devoted to the infirmary.

But is it necessary to observe that an excellent general rule of this kind takes it absolutely for granted that a doctor, in the exercise of his profession, is doing nothing which is gravely forbidden by the law of God? It is, at least, taken for granted that the assisting nurse is not skilled enough to know exactly what the doctor is doing or why. Neither of these assumptions can be taken for granted in these days. Non-Catholic surgeons of repute, acting according to their lights, cause abortion with a tranquil conscience, if it is considered necessary for the patient's health. The assisting nurse knows exactly what the surgeon is doing and why. If she is a Catholic she almost certainly knows that it is a grave sin directly to cause abortion, though she may not know that there is excommunication attached to this crime. Her position is one of the greatest difficulty, and she is assured of the intelligent sympathy of any priest or theologian whose advice she may ask. But if any of these were to tell her that all she need do is to carry out orders, and that the blame would rest entirely on her superiors, he would show himself an extremely ignorant or reckless counsellor.

What he should do, of course, is to apply the ordinary principle permitting mediate co-operation in the evil of another. This would mean discovering what exactly is her part in this fell business. If it is judged to be of its nature indifferent, such as sterilizing instruments, it may be permitted for a grave reason *remoto scandalo.* If it is of its nature evil, such as administering drugs to cause abortion, it cannot be permitted tor any reason whatever. There will sometimes be appalling doubt and difficulty in deciding whether the action is intrinsically indifferent or evil: in other words, whether the co-operation is mediate or immediate; there will be less difficulty in deciding on the gravity of the reason and on the measures taken to avoid giving scandal. But it is evident that no answer suited to all cases can be given to the question

[1] J. *Off.,* 24 May, 1884; 19 August, 1888; 24 JA» 1895. Cf. *Fontes,* n. 1173.

whether a nurse may assist at an abortion, unless it is clear that what she is expected to do is intrinsically wrong, in which case the answer must always be in the negative. But the judgement that the action is not intrinsically wrong docs not imply that it is always permissible. The gravity of the reason alleged and the scandal resulting must also be weighed before coming to a decision. The solution will vary with each individual case according to the circumstances of each, and in the absence of any official ruling the question is essentially one for the guidance of a competent confessor.

W hilst showing all the respect and obedience due to superiors in everything lawful, a trained nurse is not a machine or an automaton but a member of a highly skilled and responsible profession. "Respect your vocation in yourself," writes Professor Masci, "and take care not to defile or profane it. Do not sell your skill like a labourer or a domestic servant, and do not permit others to think that you arc doing so. It is not merchandise offered for sale."[1]

During the Nurses' Congress at Rome, in the summer of 1935, mention was made of the "deplorable theories which sought to penetrate the nursing profession, in order to use nurses as the unwitting instruments for the propaganda of nco-Malthusian eugenics", and the Holy Father himself said in his address: "Above all, continue to fight against paganism and materialism, because you know full well what means they employ to laicize, so to say, the nursing profession, to laicize it in the very worst sense of the word. It is a laicization which is equivalent to de-Christianization. ... It has been well said that there is no such thing as neutrality : it is an illusion. Theoretically speaking, yes; we can speak of things as good, of the indifference of the acts and of the persons. But if theoretically we can speak of neutral action, in practice it is impossible to keep a true neutrality, for consciously or unconsciously we work either for good or for evil."[2]

## 389.—English Law on Abortion

*Does the English law at the moment protect any medical man who performs an abortion for medical reasons?*

As the law stands at present, in order to secure a conviction for abortion it is necessary for the prosecution to prove that the operation was not done in good faith to save the life of a mother. The *Offences Against the Person Act* 1861, section 58, modified the previous law by defining criminal abortion as unlawfully using an instrument with intent to procure a miscarriage. As interpreted by the courts, up to 1938, the statute means that procurement of abortion is not forbidden if it is judged necessary to save the life of the mother. In the *Ponrne* case the defence was that it was necessary for the girl's health, and the presiding judge himself professed difficulty in understanding the difference between danger to life and danger to health, since life depends on health, and death results if health is gravely impaired. It would appear, therefore, that the advocates of therapeutic abortion have

[1] *Documentation Catholique,* XXXI, 1956, col. 1296, quoting *VOsscrvatore Romano* 10 February, 1954.

[2] *The Tablet,* 7 September, 1955.

got what they desire from the interpretation of the court, without any change in the statute being necessary. On the other hand, it is possible, though unlikely, that in some future case a different verdict might be given; the verdict in the *Bourne* case meant that the Crown had not proved beyond reasonable doubt that Mr Bourne's act was not done in good faith for the purpose of preserving the girl's life.[1]

Amongst the steps preliminary to setting up the Inter-Departmental Committee on Abortion[2] the *British Medical Journal,* 21 April, 1934, issued a report submitted by their Council declaring, amongst other things, that the initiation of an inquiry did not properly fall within the responsibilities of the medical profession, since the subject of abortion had "predominating interests other than medical". It is a pertinent observation, since doctors like other human beings are subject to the natural law, and the interest which predominates over all others is that directly killing the innocent is against the law of God, which man disregards at his peril and the peril of the whole community. "It is the duty of the public authority to defend the lives of the innocent. . . amongst whom we must mention in the first place infants hidden in their mother's womb."[3][4]

## 390.—Self-Mutilation

*On what logical principle is if commonly maintained by Catholic moralists that self-mutilation is not permissible except for the good of the body? Why not for some higher spiritual or social good?*

(i) The principle is the same for mutilation as for suicide, from which it is, after all, only a step removed. A man does not enjoy absolute ownership of his bodily life and members, in the sense that he can do exactly as he pleases with his own; this prerogative belongs to God. The argument based on the divine prerogative, as De Lugo aptly says in discussing the subject, "videtur infirma, nisi aliunde probetur hominem non esse dominum suae vitae, sicut est dominus suarum operationum".[1] The notion of "owner" is a relative one, like that of "father" or "master", and it implies a relation to things outside of oneself; just as a man cannot be his own parent, so also he cannot be said to own himself. It is rather a metaphysical line of thought. The wrongness of suicide is better appreciated, no doubt, from the first reason given by St Thomas,[5] the natural tendency of all living things to preserve themselves and resist destruction. On the assumption that suicide is wrong, because a man does not own his bodily life, it follows that mutilation is wrong, since the body is made up of parts. If he may not dispose of his bodily life as he wishes, neither may he dispose of his bodily members.

Therefore, he is not the owner but the administrator and custodian of his own body and its parts. It may happen that a member is harming the whole, instead of serving it, in which case it is man's right, and often his duty, to

[1] Cf. *The Tablet,* 25 July, 1958, p. 101.
[2] For a criticism of its Report cf. Richard O'Sullivan, K.C., in *The Clergy Review,* 1939, XVII, p. 595.
[3] *Casti Connubii.*
[4] *De Justitia,* Disp. X, 1, n. 2.
[5] II-II, 64, 5.

mutilate the part for the benefit of the whole; for his members exist for the purpose of serving the organism.

(ii) Sound Catholic moral tradition has always limited the lawfulness of voluntary self-mutilation to the circumstances just outlined. It is unlawful for any other purpose. Castration as a means of preserving chastity, a method often practised by abnormal religious persons and sects, has always been condemned by the Church. A few isolated cases of saints who have otherwise mutilated themselves in pursuit of a higher spiritual good are exceptions, difficult to explain; but exceptions prove the rule.[1] It is wrong to mutilate oneself, outside of the circumstances mentioned in (i) because there is an immediate and a necessary connection between the physical health of the bodily organism and its members, but there is no necessary connection between mutilation and a higher spiritual good, even the avoidance of sin, "quia peccatum subiacet voluntati".[2] The point is very relevant to the question of sterilization, since it would appear that the physical welfare of the body politic is of a higher order than the physical welfare of an individual. If mutilation is lawful in the one case it would seem lawful in the other. Why is it not? Because there is no parity between the two things. A man's bodily members are for the good of the whole organism, but individuals do not exist for the good of the state. Nor is there a necessary connection between the integral possession of bodily faculties by individuals within the State and the welfare of the State of which they are, in some sense, parts. There may be a connection between the exercise of these faculties and the public welfare, and it may sometimes be necessary for individuals not to use the faculties they possess. Whatever advantages the sterilization of defectives is alleged to have for the public good can be secured by segregation.

## 391.—Sterilization

*Could it not be said that, in the male at least, sterilisation in its modern form is only a slight mutilation, and that an individual would do no grave wrong by voluntarily submitting to it?*

(i) Sterilization of the male is effected by severing the ducts which convey the spermatozoa from the testicles to the exterior (vasectomy); in the female it is effected by severing the Fallopian tubes which convey the ovules to the womb (salpingectomy). Vasectomy is a slight operation, taking only a few minutes, but salpingectomy is more serious and is reckoned by Eugenists to be about the same gravity as the operation for appendicitis; a suggested alternative aims at sealing the Fallopian tubes, at the point of their entry into the womb, by electric cauterisation, a process which, if perfected, would be almost as simple as vasectomy. The physical effects of both operations are not necessarily harmful, and in many cases beneficial; the persons remain capable of intercourse, although some maintain that vasectomy causes canonical impotence. So slight is the operation, at least in the male, that some theologians in the past have hazarded the view that it is not a grave mutilation. This view cannot be sustained, for the gravity of an act is

[1] Cf. Ballerini, *Opus Morale,* II, p. 619.
[2] II-II, 65, I, ad 3.

determined by its immediate effect; deprivation of the power of reproduction is regarded by all men, whose instincts are not depraved, as a grave loss. The sexual powers are affected as radically as the powers of speech would be affected by an operation which permitted the emission of sounds but prevented purposeful utterance.

(ii) The wrongness of sterilization may be established indirectly by showing that its ultimate effects on society will be pernicious. Experts on mental disease are not agreed, at the moment, as to the social utility of the project. From an ethical point of view the result of such an inquiry is almost negligible, because it depends on so many contingencies. A better, more secure, more exact method, granted a logical application of elementary principles, examines the action in itself rather than in its social consequences, whether actual or hoped for: and this method is the very salt of Catholic moral theory. We condemn contraception and abortion because they are wrong in themselves, we allow intercourse in the "safe period" and the extraction of the diseased womb of a pregnant mother, because these actions are right in themselves. Similarly our judgement on the wrongness of sterilization must turn chiefly on an examination of the action in itself, namely, as a grave mutilation inflicted for the purpose of preventing procreation.

(iii) It is often proposed in this country to make sterilization lawful for those who want it, but not to inflict it on unwilling subjects. A proposition of this kind is, obviously, the thin end of the wedge, and is open to grave abuse; it is idle to imagine feeble-minded persons capable of choosing for themselves in so important a matter.

But the voluntariness of sterilization does not affect the moral issue, as we have discussed it. It is wrong whether voluntarily or compulsorily inflicted. Undoubtedly, the grossness of the wrong is more clearly perceived if it is proposed to mutilate unwilling and innocent persons for the common good, to use them as chattels or instruments for the welfare of posterity. Every human individual, even with the most ghastly defects, has a right to the integrity of his members. Grave, indeed, would be the consequences of departing from so elementary a principle of natural justice, and of allowing the community to sacrifice innocent citizens on the altar of the common weal. If the principle is departed from, why restrict the process to the worst types of feeble-minded? Why should not a plague-stricken man be killed rather than allow him to spread his disease? Our writers dwell chiefly on the aspect of forced sterilization, and they argue, with reason, that the general effects on the community would be bad, and that segregation is a superior remedy. Nevertheless, the kernel of the moral issue is to be found rather in the essential wrongness of self-mutilation.

Amongst the more considerable Catholic studies on the subject cf. Guchtenecrc, *A propos de la Loi Allemande sur la Stérilisation,* Brussels, 1954; Sobradillo, *La Procréation et la Stérilisation, an point de vue du Droit Naturel,* a doctorate thesis, Fribourg, 1932.

## 392.—Castration of Choristers

*There appears to be an almost insuperable difficulty arising from the toleration extended in the past by ecclesiastical authority to the practice of castrating boys, in order to preserve their voices. It seems odd that the Church should tolerate the*

*castration of healthy boys and forbid the far less violent operation of sterilising mental defectives. What is the best way of meeting this very reasonable objection?*

The only logical way of meeting this objection is to admit that the few authors who, in the past, defended the lawfulness of castrating boys or, at least, conceded its probability, in the accepted sense, were wrong in so doing. Their doctrine is a good example of an erroneous and lax proposition wrongly defended on a principle of probabilism.

The doctrine of the Church condemning sterilization is a logical application of the principles concerning mutilation. We do not enjoy absolute *dominium* over our bodily members. A man's members are under his control and must be used by him for the purpose of preserving the complete organism. Therefore, if bodily mutilation is necessary for the physical well-being of the whole body, it is morally justifiable and even may be obligatory. But it is not lawful for any other purpose. The reason is that there is a necessary and immediate connection between the physical health of the body and the mutilation of a diseased member, but this connection does not exist with regard to other and even higher purposes.

The authors quoted by St Alphonsus, III, §374, in favour of the lawfulness of the practice give, as one of the reasons justifying their verdict, the common good and utility of the resulting preservation of the voice. It can readily be admitted that, if the common good is sufficient reason for the castration of boys, it is extremely difficult to see why it is not a sufficient reason for the sterilization of defectives. St Alphonsus docs not defend the practice himself, and I know of no modern theologian who does, "nam si ob suavitatem cantus castratio liceret, licita dicenda esset ob plurcs alios fines".[1]*

Was it tolerated by the Church in the past? Some of the authors, as Elbel, who defended the practice, appear to say that it was. But a truer statement would be that the Church tolerated the employment of these castrated persons in the choirs. Granted, perhaps, that if these singers were refused by the Church choirs, the objectionable practice would have ceased much sooner than it did, but it does not follow that the Church approved of castrating boys. The custom of castrating singers was in possession and it was judged that, to avoid greater evils, their employment could be tolerated by the bishops. Thus, Benedict XIV, in dealing with the subject, clearly demonstrates the principle on which mutilation is lawful and, as a necessary consequence, declares the castration of boys to be unlawful. "Homo enim non ita membrorum corporis sui dominus est, ut assentiri valeat abscission! alicuius ex illis, praeterquam si totius corporis salus et conservatio aliter obtineri nequeat . . . Quare nec praetensa necessitas parandi sibi victum, nec laudabile propositum inserviendi Ecclesiae in cantoris officio, satis justam rationem, aut causam suppeditant, ad excusandum a peccato ultroneam hominis evirationem."[2] The subject is discussed by Fr Davis, S.J., in *State Sterilisation of the Unfit,* p. 54 *seq.,* an admirable study of the whole question.

Fr Riquet, SJ.,in *Cahiers de Laënnec,* July-September 1937, dealing with this question of castrated choristers, who used to sing in papal choirs right up to the time of Leo XIII, makes a fresh point in addition to the usual

1 Ballcrim» *Opus Morale,* Π, p. 622.
*1 De Synodo Dioecesana,* XI» 7, iv.

apologia. Castration was, at one period, widely adopted as a therapeutic measure, and an investigation in 1676 by the French Royal Society of Medicine revealed that in one diocese, Saint-Papoul, more than 500 children had been castrated for hernia. Amongst so many, it is evident that a good few would have useful soprano voices and would continue to be employed by choirs.

## §4. WAR

### 393.—Conditions for a Just War

*Is there any theological authority for the view that the conditions for a just war, as set out in the manuals, are no longer applicable?*

In the ten years or so preceding the outbreak of the Second World War there was a tendency so to interpret the traditional teaching, and particular attention was given to the statements of Cardinal Faulhaber in 1932 and to the conclusions reached by a meeting of theologians at Fribourg in 1931.

(i) The Cardinal's discourse was given on 7 April, 1932, in the basilica of St Boniface, Munich, its occasion being the disarmament conference at Geneva a few days previously in which the delegates of sixty-four states participated.1 The relevant passage is as follows: "We are at a turning point in history, and there will be a change of outlook on the question of peace and war as on other questions. Public opinion must be modified even though such a change cannot take place without a certain shock. Moral disarmament must precede military disarmament. The glory of military uniforms and parades has grown pale, and the old war hymns must be deposited with the old weapons in military museums. Military heroism is not the only kind of heroic existence. The moral theology of war will speak a new language. Whilst remaining faithful to its ancient principles concerning the lawfulness of war, it will take new facts into account."

His Eminence proceeded to outline these facts. The first is in the situation before war breaks out. In the past it was easier to be in good faith and to think that every war was just, but in these days, before taking to arms, every effort must be made to settle conflicts without war.

The second fact concerns war itself. The practice of modern war, with its poison gas and aerial combat, is not only unchristian but inhuman.

The third fact is in the consequences of war. The ultimate effects of a modern war arc so terrible as to be out of all proportion to the national well-being that the war is supposed to promote: economic distress and taxation bleed the people white; rhe ruin of the vanquished spreads to the victor, and the military defeat of one is the economic defeat of them both. Politically, indeed, each state must maintain its own political sovereignty, but economically all the peoples of Europe stand or fall together. For this reason the conditions required for a just war are much more rare than formerly.

To the objection that the German Empire cannot remain unarmed whilst surrounding nations arc arming, he answered that the rights of nations, in

1 Text in *Scbonere 7.uhmft,* 21 February, 1932; French Tr. *Documentation Catholique,* 1933 XXIX, col. 472 *scq.*

this respect, are equal, and that the German Empire has the right to guarantee itself against attack. But this would be best secured by working for disarmament amongst all the nations, rather than by trying to outstrip them all in armaments. J7 *vis pacer?/ para pacer?/.* The discourse concluded with a plea for disarmament, and an exhortion to pray earnestly for peace.

(ii) The view that war is forbidden to Christians in all circumstances is the teaching of such bodies as the *Society of Friends,* and is the usual position of the conscientious objector. There may be divergencies in matters of detail, but the theological teaching that a Catholic may not hold this view has not been modified by any theologian of repute.

At the other extreme is the view that, owing to original sin, warfare must be numbered amongst the ills necessarily attendant on this càrthly life, and is inevitable; universal peace amongst all nations is an unattainable Utopia. A German priest, the author of *Peace and the Clergy,* fastens this very pessimistic and bellicose attitude on his clerical brethren in Germany. There may be such, but we do not know of any Catholic theologian who defends this thesis.

The conditions for a just war, enumerated by the manualists following St Thomas,[1] are that it must be duly declared by the supreme authority, for a just cause, and with a right intention. Further conditions arc formulated by some of the manualists, but they are reducible to one or other of these three : for example, that all other means have been tried and have failed; that the war will not cause greater evils than it proposes to remedy; and that it will be waged with due regard for the rights of non-combatants and international pacts.

It is suggested that the application of this principle to changed modern conditions arises chiefly in two ways. In the first place, the notion of "supreme authority" has developed on the supposition that there is or will be some supra-national supreme authority for settling disputes. It follows that the rulers of any one individual state are no longer "supreme" in this connection, and that a war declared by them without previous recourse to the supra-national authority is an unjust war because the first condition is lacking. This is the interpretation suggested by a number of theologians of various nationalities assembled at Fribourg (Switzerland), 13 October, 1931,[2] and it is becoming adopted by other writers, e.g.: "Etenim, ut vidimus, bellum legitime indici nequit nisi *auctoritate publica.* Atqui, supposita institutione societatis internationalis, auctoritas gubernii in singulis nationibus jam non est suprema, et quasi privata efficitur. . . ,"[3]

Further, it is suggested that the condition requiring "a grave and a just cause" is absent in modern warfare, since the phrase is to be understood with Noldin[4] and other manualists: "Causa gravis est quae praeponderet tot malis tum corpori tum animae a bello provenientibus." But the methods of modern warfare, the unlikelihood of localizing a conflict, and the economic disturbances which follow arc so appalling that a "cause" which is proportionate to such evils can scarcely be conceived. The older theologians were not confronted with issues of this magnitude and could, therefore enumerate a whole litany of just causes.

[1] *Summa TbtoL,* II-II, 40, 1.
[2] Cf. *N.R.T.,* 1932, p. 895.
[3] *Collât. Torn..* 1937, p. 107.
[4] *TbeoL MoraJis,* II, §353.

The second modification is probably more easily understood than the first, since the supra-national authority is at present Little more than a potentiality. It is on this idea of the lack of a proportionately grave and just cause that the modern orthodox pacifist prefers to dwell and, if an opinion may be hazarded on a subject bristling with difficulties, it appears to be theologically sound in theory when it is a question of an offensive war. In practice, however, every nation which goes to war pleads that it is on the defensive, and it would be difficult to discover any Catholic theologian of repute who holds that to engage in a defensive war, even with all its modern horrors, is unjust. Such a position would in no way differ from the view that war is in all circumstances wrong, a doctrine which is opposed to Catholic tradition. If a definition of *offensive* war is asked, the modern writers favour the view that it is the war which is waged without previous recourse to a supra-national tribunal or in defiance of its decision. But, until there exists a tribunal of this kind, accepted by all nations and commanding obedience by the common consent of all, this definition of *offensive* remains a purely academic one.

(iii) The traditional principles must, we think, remain until rejected in any particular by the Church. The Holy See swiftly condemns far less serious homicidal actions which are clearly immoral, but has not so far unequivocally condemned modern warfare. Every just war is defensive in the *bona-fide* estimation of the combatants.

The acts of modern warfare must still be governed by such traditional considerations as the double effect principle; international agreements, usually first violated as each side believes by their opponents, must nevertheless be maintained if they are an expression of the natural law, e.g. the humane treatment of wounded; otherwise, if repudiated by one party, they may be disregarded; all acts of war must be limited by the condition *cum moderamine inculpatae tutelae,* e.g. the total destruction of a city may or may not be justified on this criterion.

Cf. Dr Pelland in *Documentation Catholique,* 1955, XLIV, col. 643, for an analysis of the Thomistic teaching and its development; the best manualist treatment is by Hcylen, *De Justitia* (1934), p. 609.

## 394.—Early Church and War

*What are the best sources to consult on the question of the attitude of the early Church towards warfare?*

The article "Guerre" in *Diet. Thiol.,* VI, col. 910 *seq.* gives the chief texts, and in periodical literature *The Jurist,* 1941, p. 25 j; in the *Ecclesiastical Review,* 1947, p. 401, the Augustinian doctrine is presented and developed by Mgr Ryan. Probably the most convenient source is a book by a non-Catholic scholar, *The Early Christian Attitude to War,* by Dr C. J. Cadoux, first published at the dose of the First World War and re-issued in 1940.[1] Its chief interest for us, perhaps, is the fact that it contains a preface by Dr

[1] George Allen & Unwin.

W. E. Orchard, in which, amongst other things, the author's keen scholarly powers and his profound reverence for truth arc commended.

Everyone would, we think, wholly agree with this praise of Dr Cadoux whose work is the only book of its kind in English. The author is a pacifist by conviction, and he holds the belief that his views are supported by the teaching of Our Lord and by the witness of the early Church. But he has not written primarily in order to prove his case, nor to construct a piece of propaganda which, following the lines of such literature, carefully selects all favourable facts and arguments whilst omitting or putting the worst possible construction upon those which are unfavourable.

The book is meant to be, and is, an historical and exegetieal study of the subject. Dr Cadoux sets out impartially those statements of Our Lord which appear to condemn war and those which appear to sanction it. There follows a similar examination, on the one hand, of those texts which record the early Christian disapproval of war, and, on the other hand, of the evidence which appears to indicate that early Christians accepted war as not being, at least, clearly opposed to their religious profession. The texts are given, very often in full, with the relevant words in the Latin or Greek original—the reader will grow accustomed to the unusual spelling of proper names, for example, Khrusostomos, Eirenaios, Basilios—and the independent student can draw his own conclusions from the information given.

It must be remarked, nevertheless, that Dr Cadoux does not conceal his own convictions throughout this study, least of all in the closing pages of summary. When he writes, for instance, that "in view of all that we have just seen of pre-Constantinian times and in view of the subsequent history of Europe, it is difficult to resist the impression that the Church took a false step when she abandoned her earlier and more rigorous principles", he is assuming on the part of the Church a *volte-face* which he has not proved to exist. He should not therefore have been surprised at a correspondent of his observing that he "fails to prove his case".

*Can yon discuss shortly (/) the theory which explains in some measure the possibility of a war being just on the part of both belligerents; (jï) the lawfulness of a Christian State entering upon an alliance, for the purpose of war, with a State which is professedly anti-Christian?*

(i) The question of a war being just on both sides is well analysed by Fr Yves de la Briere in *L,e Droit de Juste Guerre* (1938), pp. 82 *seq.* There is, of course, an obvious distinction between a war which is just objectively and that which the population of each country conceives to be just in good conscience. The latter state of mind is caused by the formation of public opinion in a given direction long before any war is imminent, and by insistent propaganda which, in modern times, is more intense than ever before; even when both these causes are, perhaps, absent, the natural patriotism of the people in every country is likely to influence their judgement in a sense favourable to their country's cause. It cannot, therefore, be doubted that both belligerents can at the same time be persuaded sincerely and con-

scicntiously that their cause is just, even though it must be admitted that objectively they cannot both be right. The collective conscience of one party at least in the struggle may be regarded as invincibly erroneous.

Objectively, if a war is just, it is impossible for it to be just on both sides, for the theory of the just war assumes that one belligerent is the transgressor and the other exercising an act of vindictive justice. But it may easily happen that the latter, in exercising this right, has chosen the method of war before exhausting every other possible means of reaching a settlement. In this case there is injustice on both sides, but for different reasons.

(ii) St Alphonsus discusses the point, carefully weighing the various opinions held by Catholic writers, in *Theologia Moralis,* III, n. 406: "Tertia sententia vero dicit per se licitum esse advocare haereticos aut gentiles; sed plerumque per accidens esse illicitum, ob damna religioni imminentia." This is the view taught by Suarez, St Antoninus, Bonacina and others. St Alphonsus holds that it is speculatively probable, but that, in practice, the opinion of Sporer and others should be followed, namely: "non licet regibus Catholicis, in bello justo contra alium catholicum principem, in auxilium vocare haereticos aut gentiles". This practical solution must be understood to apply to the contingencies existing at the time St Alphonsus wrote, but it cannot be denied, in our view, that by conceding speculative probability to the opinion of Suarez, he is teaching in equivalent terms that there is nothing necessarily and intrinsically wrong in this alliance. It is the intrinsic nature of an action which must always be the first concern of a moralist.

A writer in *La Vie Intellectuellement,* 1939, P· 216, suggests certain considerations which appear to us to be quite valid, in support of the lawfulness of an alliance of this kind. For even the Church is accustomed to conclude concordats and to maintain diplomatic relations with governments whose whole policy and ideology is at variance with Christian ideas; this is done for the purpose of protecting the rights of the Church, and it may also be hoped that by maintaining contact there is some possibility of influencing the other party in the right direction. What is exactly the point to be examined in deciding upon the lawfulness of a belligerent alliance with another nation? It is not precisely the religious or moral condition of that nation, nor the internal policy and methods of its government, but solely the nature of the action or enterprise which it is proposed to undertake in alliance, namely the purpose of the war. If this purpose is un ust or immoral, an alliance even between two Catholic nations is intrinsical y wrong. If the purpose is just, the alliance is intrinsically lawful on the supposition, of course, that the other conditions for a just war arc present. Obviously it is attended by dangers, as the above writers say "per accidens", e.g. the danger that anti-Christian ideas and forces will increase in the event of an allied victory, and perhaps spread to the Christian nation: "Beware thou never join in friendship with the inhabitants of that land which may be thy ruin."[1] But, as in every other kind of "communication" which, though lawful in itself, is attended by certain dangers, a proportionately grave cause is always held to justify the action provided measures arc taken to ward off the dangers.

[1] Exodus xxxiv, ii.

### 396.—War and the Unjust Aggressor

*Is it a correct understanding of the theological principles to suppose that killing in warfare is merely a large scale application of the right of an individual to kill any unjust aggressor?*

It is correct only in so far as, in both instances, the principle invoked is *vim vi repellere omnia iura permittunt.* There are some Catholic writers who hold that the killing of enemy combatants in a just war is indirect,[1] their reason for this view being based on the analogy between warfare and the act of legitimate self-defence against an unjust aggressor.

This latter problem is one of the minor difficulties of the moral theologian which has not yet been solved in an entirely satisfactory manner. Most of the writers, following St Thomas, teach that a private individual may never intend directly to kill the aggressor, and some extremely fine distinctions have to be employed to justify such killing whenever legitimate self-defence cannot otherwise be maintained. The best solution, we think, is the one proposed by Dr Van Hove in *Ephemerides Theologicae Eovanienses,* 1929, p. 655, namely, that the common good and not merely the private good of an individual is usually at stake, and that, therefore, the direct killing of an unjust aggressor may, in certain circumstances, be intended because sanctioned by the State.

But, whatever may be the truth in this argumentation, and whatever may be the limitations to one's right of self-defence against an individual unjust aggressor, St Thomas teaches with perfect clarity that the intention directly to kill enemy combatants in war is lawful: "illicitum est, quod homo intendat occidere hominem, ut seipsum defendat, nisi ei qui habet publicam auctoritatem, qui intendens hominem occidere ad sui defensionem, refert hoc ad publicum bonum, ut patet in milite pugnante contra hostes, et in ministro ludicis pugnante contra latrones."[2]

### 397.—Military Objectives

*Seeing that, in modern warfare, the whole nation takes an effective part, is it possible to distinguish between what is and what is not a legitimate object of direct attack?*

Amongst the civil population of a modern state at war there arc a considerable number who are as much engaged in the war as the forces in uniform, and however much we may lament enemy attacks upon them, there is no very good foundation for moral indignation on the grounds that such attacks arc murder of the innocent.

Two very divergent and opposite beliefs arc born of this conclusion. The intelligent pacifist maintains that therefore modern warfare is a *reductio ad absurdum,* a conflict not between armies but between whole populations, a lunacy which can never be brought within the conditions prescribed for a

[1] Cronin, *Science of Ethics,* II, p. 666.
[2] II-II, 64, 7.

just war; it is his duty and everyone's duty to refuse any kind of war service. At the other extreme is the belief that therefore a modern nation engaged in warfare must methodically and ruthlessly do its utmost to destroy the whole enemy population; having once begun, it should make a good job of it, on the lines of Deuteronomy iii, 6, "destroying every city, men and women and children".

Both views are unacceptable to Catholics. Under the influences of the Church, war has come to be recognized as a conflict between the armed forces of nations, not a free fight between all the subjects of one state and all the subjects of another acting as two rival mobs. There can be no doubt that this is the origin of the distinction between "combatants" and "non-combatants" *(nocentes* and *innocentes).* If the word "innocent" is taken, not as synonymous with "non-combatant", but in the more usual connotation of "blameless", i.e. not responsible for the inception or continuance of the war, it is evident that the civilians of any modern democratic state are not entitled to this description. They elect the government and cannot entirely dissociate themselves from its actions.

But, taking the term "combatant" or "nocens" in its traditional sense, its meaning must be considerably widened in modern warfare, to include civilians engaged in manufacturing instruments of war, as well as places and buildings serving, in some sense or other, the war efforts of the nation's armed forces. A German jurist suggests "friedlich" and "nicht friedlich", "peaceable" and "not peaceable", as the modern equivalent of the ancient distinction.

We think that probably "military objective" and "non-military objective" is as good a distinction as any, but it is essential to allow the widest latitude, on the part of a country's rulers or its military leaders, in defining what is a military objective.

We cannot, however, agree that a nation's spirit of resistance is, as a matter of fact, a military objective which may lawfully be attacked and reduced by bombing. It is begging the question to say that the destruction of a nation's will to resistance is a military objective, though it is undoubtedly the war aim or end of the opposing nation. What is or is not a military objective belongs to the notion of "means" to this end.

Nor is it true to say that, in modern warfare, there arc no objectives without a military significance of some kind. Purely residential areas, villages and hamlets, municipal buildings and libraries, cathedrals and churches, hospitals and schools arc clearly non-military objectives. And amongst the persons who arc not a legitimate object of direct attack are all children, as well as the men and women who are neither serving in the forces nor employed in manufacturing instruments of war, e.g. doctors, nurses, lawyers, schoolteachers, and agricultural workers.

## **398.—** Reprisals

*To what extent does warfare carried on as a reprisal for some alleged illegal enemy action differ in principle from ordinary warfare?*

Reprisals, as defined by the *Institute of International Law* at Paris in 1934,

are measures of constraint, disregarding the law of nations, taken by a state which has suffered from the unlawful acts of another state, the purpose being to compel the latter to respect the law by inflicting damage upon it. As so defined reprisals are not restricted to the activities of war, nor need they necessarily imply the use of lethal weapons, but they always imply an intentional departure from a previously agreed convention. When one belligerent, for example, uses gas in defiance of an established convention, the other belligerent, as a reprisal, also uses gas, or adopts some other weapon which is normally forbidden, precisely in order to bring home to the enemy that it is not worth his while to break the rules. An increased reciprocal rigour or determination in the course of the war, provided the normal rules of warfare arc observed, is quite wrongly described as reprisals.

There are people who think that, no matter what is done in the course of a war as reprisals, the only moral principle involved is the obligation of keeping one's word, a contractual obligation which ceases to bind one party immediately it is violated by the other. *Fas est ab hoste doceri.* And, indeed, if the ultimate ethical distinction between good and evil is to be sought in human convention and contract (an antiquated theory which nowadays claims few adherents) there is nothing more to be said on the subject. There will be absolutely no limit to what may be done as reprisals, each side outdoing the other in acts of savage cruelty and barbarity.

We cannot, in this place, examine the difference between *malum quia prohibitum* and *prohibitum quia malum,* but it will be found, we imagine, that practically everyone holds that the line must be drawn somewhere, be it only in the name of human pity or what is due to the dignity of the human body, and that a civilized man must and will refrain from certain savageries, even though an uncivilized enemy may indulge in them, and even though it can be demonstrated that their adoption will be not only an effective reprisal but a sure means of victory.

Reprisals are, so to speak, a war within a war, and are no more odious or immoral than is war itself. But they are subject to the same conditions as war, including the moral obligation not to employ any method which is forbidden by the law of God; and just as a war will cease when the parties achieve their aims or reach an agreement, so also should reprisals cease—the war, if necessary, continuing its course—once their purpose has been attained or an *interim* agreement reached. It was on these principles that Benedict XV intervened in the first war to secure from the belligerents that no restrictive measures should be applied against prisoners of war, as reprisals, until an exchange of views had taken place.

In international agreements, as in the civil laws of any country, there will be found some articles which derive their force entirely from the free consent of the parties to the convention : for example, an undertaking not to use gas in warfare. Other articles, however, arc also agreed upon which derive their force from a higher law, and which are binding upon all men antecedently to any convention amongst them, exactly as the prohibition of theft binds all men quite apart from its inclusion in the civil code. It may, indeed, be convenient to record explicitly in writing the intention of the parties to observe this higher law, but its binding force is not to be traced merely to a contractual obligation. It is part of that immutable and indispensable law which the Creator has placed upon human beings.

## 399.—The Atomic Bomb

*What is to be said about the morality of using atomic bombs in warfare?*

The difference between the atomic bomb and those which preceded it being, it seems, one of degree not of kind, its moral justification must be examined on the same principles which apply to all bombing of towns in modern war. If the destruction of the two Japanese towns had been caused by an enormous air force, using an antiquated type of bomb, no special moral problem could, at this stage, have arisen.[1]

Bombing is justifiable on the supposition that the immediate and direct target is of military significance for the success of the war, and that the accompanying destruction of property and people, which may have no military significance at all, must be tolerated for proportionately grave reasons, provided everything possible is done to minimize the evil.

The two Japanese towns had, at least, as much military significance as Berlin or Hamburg. Though we cannot say, with any certainty, that the evil should have been minimized by warning the inhabitants of those two towns more explicitly, the allies created an awful precedent by being the first to use this weapon in warfare, and their moral position would have been stronger if it had been found possible to give a previous explicit warning about the nature of this new weapon.

One fairly widespread and obvious criticism is that such appalling slaughter, on so large a scale, even granted that it is the indirect effect of bombing a military target, can never be justified by any military necessity whatever; that modern warfare has, with the discovery of this bomb, reached the stage when no proportionate good can be expected from the use of such weapons; and that, accordingly, modern warfare can never henceforth be justified. Whilst always prepared, of course, to welcome the decision of the Church on a moral issue of this character, it seems that so simple a solution, which condemns all warfare, is not in harmony with Catholic principles. It is, at least, for the exponents of this view to explain what a peaceful country should do when attacked by an aggressive power armed with the new weapon.

Another form of criticism is limited to the two occasions on which the atomic bomb was used. It may be thought that the war against Japan would have been brought inevitably to a successful issue without its use, and that, accordingly, there was no moral justification because no military justification on these two occasions. This is a matter for the decision of the military authorities concerned, and, unless we arc in possession of all the data upon which they acted, it is difficult to form a correct moral judgement.

As in every case involving the principle of the double effect, one has to judge whether the evil effect is in proportion, or out of proportion, to the military advantage of destroying a place which, in some sense or other, is to be reckoned a legitimate objective for attack. The difficulty is far greater in this instance than in any other similar problem which arose during the war: for the weapon is new and even its inventors seem to have no very clear idea

1 On obliteration bombing in general, cf. *Tlxological Studiis,* 1944, p. 261.

of the destructive force of the bomb. From accounts received, which must be accepted with caution, it appears that people are still succumbing to the effects of the bomb who, at the time, were hardly injured at all, and for all we know this evil effect may develop and continue indefinitely. If this is so, the judgement must be, we think, that the evil effect is out of all proportion to the military advantage secured, and that accordingly the use of the bomb in warfare is wrong. But a final and certain judgement should be withheld until all the facts are known with certainty.

Faced with the grim prospect of future wars, in which the power of the atomic bomb may be developed, the only remedy lies in a convention amongst all people, banning not only the atomic bomb but all bombing from the air in warfare, exactly as poison gas has been banned. One has, indeed, no guarantee that the convention will be observed, but it should be noted that all the belligerents during the last war refrained from using poison gas, moved no doubt by the fear of retaliation; we are entitled to expect that, for the same reason, a convention which banned aerial bombing would likewise be observed; we might even hope that this would eventually lead to banning all warfare in the settlement of international disputes.

For centuries the Catholic Church, whilst not condemning warfare as wrong in itself, has always encouraged conventions amongst Christian people for minimizing the horrors of war, and the influence was more effective when the warring peoples accepted the moral guidance of the Church. Modern conventions, restricting the use of certain weapons, may not always be made on Christian motives and in obedience to the Church, but we may rightly expect them to be effective simply from the desire of all reasonable men to prevent their own complete destruction.

On the subject of atomic bombs the report of the commission appointed by the Archbishops of Canterbury and York repays study. It is dated 5 February, 1948, and published by Church House, Dean's Yard, Westminster. The Commissioners rely very largely on Catholic authorities, particularly Vitoria. Cf. *The Clergy Review* (Dr. McReavy), 1948, XXX, p. 1.

### 400.—Military Service

Aby *one consider the conscription laws as purely penal, or is there a strict obligation in conscience to obey them l Is it a grave obligation?*

(i) It is unnecessary to remind readers that the theological problems about modern warfare are extremely difficult to solve, and that the present moment is not the best time for considering them with a detached mind. It is, moreover, an unattractive subject for clerics to discuss, since we ourselves rightly claim exemption from military service, though we may urge others thereto: ". . . ad clericos pertinet disponere, et inducere alios ad bellandum bella iusta: non enim interdicitur cis bellare quia peccatum sit, sed quia tale exercitium eorum personae non congruit."[1]

To arrive at any kind of exact solution the much abused phrase *ceteris paribus* must be prominently in mind: we must assume that a war is just, and is being justly waged; that the conscription laws arc not wrongly in-

[1] *Summa Tbtnl.,* II-II, 40, 3, ad. 3.

cidcnt on certain individuals; that the obligation in question is derived from legal or social, not from commutative, justice; that due regard must be given to the invincibly erroneous conscience, and also to the popular persuasion in some countries that the conscription laws arc penal. Moral theologians are famous for "hedging", and it will be found that the reluctance of some writers to state plainly that these laws bind in conscience is due to their anxiety to provide for every contingency.

(ii) In principle, therefore, *ceteris paribus,* we think that the conscription laws in this country at the present time bind in conscience and are not merely penal. In requiring citizens to fight for their country, the state is merely enforcing an obligation which already exists: it is an obligation of social justice and is derived from man's nature as a social being. I do not know of any Catholic theologian who denies this doctrine in principle, even among those who arc *per accidetis* opposed to conscription. "Some," observes Dr McDonald, "have hinted, in a shamefaced way, at a body of theological authority that regards conscription as never binding in conscience; but, to give us our due, I find it hard to think that there is a theologian among us who believes that in his heart."[1] It is not, accordingly, surprising to find it asserted very strongly in the *Malines Provincial Council, xyyj,* n. 24, that citizens arc bound to obey these laws, a text which has obtained the canonical recognition of the *Congregation of the Council.* Cf. also *Periodica,* 1940, p. 195.

(iii) If the obligation of obedience is moral, and not merely penal, the conclusion is inevitable that it binds *subgravi.* The writers we have consulted, it is true, do not discuss whether the obligation is grave or light. But would any reasonable person think it worth while to do so, when the "matter" of the obligation is so obviously grave? Noldin[2] and others teach that military deserters sin gravely against legal justice, and the same must be held about those who evade the conscription laws. The plea might be advanced that no substantial injury is suffered by the country if a few persons here and there evade the law, provided that the mass of the citizens do their duty.

But it is a commonplace of Catholic ethical theory to consider the immediate character of actions, not their remote effects, and we have in this case an act which disregards a just and a grave law. It is rather the same with the ecclesiastical law requiring the faithful to assist at Mass on Sundays in a place which has some measure of publicity. We have a social obligation to worship God and the Church determines how this shall be done; to disregard this law is certainly grave sin for an individual, and the plea cannot be advanced that the social worship of God is not thereby injured, provided the generality of the faithful keep the law.

On the occasion of an audience given to mutilated ex-soldiers from the north of Italy, Pius XI gave a discourse on the subject of duty and patriotism. It was published in *I'Osservatore Romano,* 23 April, 1934, and has been translated into French in *Documentation Catholique,* 25 June, 1954, col. 1571. After referring with deep sympathy to their sufferings and their mutilations, witnesses of a calamity which he hoped would never again visit the world, the Holy Father said that they had suffered in this way through fulfilling their duty, the supreme right of every man and of every self-respecting conscience: "There arc many duties which arc not onerous at all, but rather

[1] *Some Ethical Questions on Peace and* II *'ar,* p. 145.

pleasant and light—duties such as those which devolve upon the fathers and mothers of families, or the duties of Christian charity, which it is a joy to fulfil. But the duties of men in the time of war are of a different character. For the time has come when duty is difficult to perform, when it demands great sacrifice, the sacrifice of one's blood and bodily members. This is what the men who have suffered in the war call to mind. They did their duty, and the recollection of that fact, in spite of the pain and suffering they endured, cannot fail to give them a high, a noble and a legitimate satisfaction, the satisfaction of a task accomplished at the price of so great a sacrifice. The Holy Father is glad, not because of the sacrifices endured by his dear sons, but because they did their duty in spite of the price it cost them."

(iv) Who is to decide whether a war is just or unjust? There can be no doubt that Fr Davis's answer accurately represents the teaching of the Church: "It must be obvious that the individual citizen, including the conscientious pacifist, can rarely decide so momentous a question, for he is not in a position to know all the circumstances. So that, if a state is, as a fact, unjustly attacked and calls upon its citizens to defend it, the pacifist attitude may not be adopted by any Catholic, or any other Christian, or indeed by any reasonable man, since the rational presumption is, unless the contrary is quite evident, that the state has come to its decision on just and sufficient grounds."[1]

### 401.—Conscientious Objectors

*What should be the confessor's attitude towards a conscientious objector?*

We assume, in this reply, that the war is just and that, on a system of universal conscription, a man is required to do military service and is called up in accordance with the law which is being fairly administered. The almost universal teaching of Catholic theologians is that it is wrong to evade military service. They differ somewhat in detailing exactly what kind of wrong is being committed, but the point is not relevant to this question.

The conscientious objector is in the position of a penitent with an erroneous conscience. He is entitled to the sympathy which would be extended to any misguided person who, for reasons of conscience (even though erroneous), is prepared to suffer considerably at the hands of the state. But error remains error, even when judgement is made in the utmost good faith, and it should not be publicly encouraged. In the words of a writer in *Etudes:-* "le refus de service militaire ne peut être moralement essayé ni encouragé, dans les vues les meilleures et plus généreuses que l'on voudra, parce qu'il n'est pas un moyen moralement licite. . . . Devant le morale Catholique, l'objection de conscience ne parait ni fondée ni admissible; elle ne mérite ni approbation d'aucune sorte, ni traitment juridique de faveur; sa répression et celle de sa propagande sont legitimes et opportunes; mais quand l'objecteur se trompe de bonne foi, qu'on s'agisse à son égard avec intelligence et pitié." Similarly Fr Davis: "Conscientious objectors, as they are called, object to war *in ioto,* but their attitude is unreasonable and sinful,

[1] C.T.S., *War and Pacifism.*
' j June, 1935.

provided a war is just, as it may be, for every state has the right to defend its honour, citizens, homes and property."[1]

The objector, as we have said, is entitled to sympathetic consideration. In the confessional this might take the form, in our opinion, of leaving the penitent in good faith concerning the views he holds.

## §5. THE VIth COMMANDMENT

### 402.—The Ends of Marriage

*What was the occasion in 1944 of the teaching of the Holy See on the ends of marriage, and how is it reconciled with the fact that most people marry for personal reasons?*

*S. Off.,* 1 April, 1944; *A.A.S.,* 1944, XXXVI, p. 105.

De matrimonii finibus eorumque relatione et ordine his postremis annis nonnulla typis edita prodierunt, quae vel asserunt finem primarium matrimonii non esse prolis generationem, vel fines secundarios non esse fini primario subordinatos, sed ab eo independentes.

Hisce in clucubrationibus primarius coniugii finis alius ab aliis designatur, ut ex. gr.: coniugum per omnimodam vitae actionisque communionem complementum ac personalis perfectio; coniugum mutuus amor atque unio fovenda ac perficienda per psychicam et somaticam propriae personae traditionem; et huiusmodi alia plura.

In iisdem scriptis interdum, verbis in documentis Ecclesiae occurrentibus (uti sunt v. gr. *finis, primarius, secundarius}* sensus tribuitur qui cum his vocibus, secundum communem theologorum usum, non congruit.

Novatus hic cogitandi et loquendi modus natus est ad errores et incertitudincs fovendas; quibus avertendis prospicientes Emi ac Revmi Patres huius Supremae Sacrae Congregationis, rebus fidei et morum tutandis praepositi, in consessu plenario feriae IV, die 29 Martii 1944 habito, proposito sibi dubio: "An admitti possit quorundam rccentiorum sententia, qui vel negant finem primarium matrimonii esse prolis generationem et educationem, vel docent fines secundarios fini primario non esse essentialiter subordinatos, sed esse aeque principales et independentes"; respondendum decreverunt: *Negative.*

(i) A decree on this subject had been expected for some time. It cannot be doubted that theories which stress the personalist rather than the genetic nature of marriage have given rise, especially in the popular mind, to incertitude about the primary purpose of marriage, which the Code defines in no uncertain terms in canon 1015, §1: "Matrimonii finis primarius est procreatio atque educatio prolis; secundarius mutuum adiutorium et remedium concupiscentiae." This incertitude, as well as the positive errors of recent writers, is happily now removed by the decree, and future writers on the subject must preserve the established doctrine that the primary purpose of marriage is genetic, and that all other purposes are subordinate to this.

The traditional teaching is traced doctrinally through St Thomas from

[1] *Moral Theology,* II, p. 508.

the Augustinian *triplex bonum.* Morally the ethical theory underlying the use of sex is a deduction from its primary purpose; the wrong of polyandry, contraception, divorce and homosexuality is traced ultimately to a violation or thwarting of the primary end of intercourse—*bonum prolis.* Canonically, the validity of marriage consent has always been based on the non exclusion of its primary end, a principle firmly established in canons 1015, §i, and 1081, §2. This traditional outlook may be described as "genetic".

(ii) The outlook rejected by the Holy Office is fundamentally "personalist" rather than "genetic". So far as we are aware no author who has written in its favour has been placed on the Index, but the work of Dr Dorns, *Vom Sinn und Zweck der Else,*[1] while preserving completely the substance of Catholic doctrine about marriage, does subordinate the genetic to the personalist idea. The book has, it appears, been withdrawn from circulation.

It seemed to Dr Dorns and other writers that the principles and practice of the Catholic doctrine on marriage were more easily explained on their theory: c.g. the use of the safe period; the marriages of persons too old to bear children; the marriage of a woman lacking maternal organs.

It seemed also that the personalist theory corresponded more to actualities; people who fall in love and get married, without much thought about raising a family, contract lawfully and validly. Similarly people eat because they are hungry or because they like it, without brooding over the primary purpose of taking food.

The teaching of the Church was made to fit adequately into the theory: the child is the fruit which this union—personalist—produces; divorce is wrong because the union—personalist—demands the complete and exclusive giving of the parties to each other.

There arc certain passages both in the *Roman Catechism* and in *Casti Corn abii* which appear to support the personalist view. The teaching of *Casti Connnbii* was omitted from the first, official, English version, but was added later, and is in Canon Smith's (C.T.S.) translation, n. 24? Unquestionably the *Catechism* puts the pcrsonalist element first and the genetic second in speaking of marriage "in a wide sense".

(iii) The new theory, rejected by the Holy Office, though attractive from many points of view, was never widely accepted amongst Catholic theologians, and it was strongly attacked by many. It substituted a theory of "meaning" or "essence", in place of a morality of "ends and purposes": in fact, Dr Dorns' distinction between *Sinn* and *Zwtck* is very difficult to understand, *Ronum prolis*—the child—becomes, as it were, an accident in the institution of marriage, exactly as many modern secular views tend to regard it. The subjectivist, individualist, personal, or selfish point of view is sufficiently prominent nowadays without attempting to rationalize it on Catholic principles.

(iv) By keeping distinct the *finis operis* from the *finis operands* one can easily harmonize a person's intention in marrying (which may be and usually is pcrsonalist) with the objective character of the union (genetic): it suffices if the genetic purpose is not excluded.

The new view cannot be taught since the decision of the Holy See, and

[1] Eng. tr. Shccd & Ward, 1939, *The Meaning of Marriage.*
[2] Cf. *Tbe Clergy Rei-iew,* 1938, XV, p. ijo.

no doubt its proponents will set about preserving what is good in the theory, whilst maintaining the subordination of ends, upon which the Holy See insists.

A Rotal judgement, 22 January, 1944, published in *A.A.S., 1*944, XXXVI, p. 179, deals with the subject, and gives a closely reasoned argument in defence of the traditional doctrine. The *ponens* does not deal expressly with the passage in *Casii Connnbii* which seemed to countenance the modern view. The passage from the Ro/zmv; *Catechism* to which the Encyclical refers is quoted by the Rotal judgement in a section dealing with the *finis operantis.*

### 403.— Sterility and Marriage

*A married man who is certainly infertile positively excludes procreation from his intention when using bis conjugal right. He argues that nature herself excludes it in his case, and that the common good is in no way injured by his intention. On the other hand, it is the common teaching that one may not, without sin, positively exclude the primary purpose of the action. Can the man's intention be harmonised with this teaching?*

Some older writers used to require that the intention *(finis operantis}* must have a positive agreement with the moral object *(finis operis}.* It is now commonly taught that, though this is undoubtedly more perfect, there is no sin unless the *finis operis primarius* is positively excluded from the intention, in which case there is a disorder but not necessarily a grave one, since it is taken for granted that the action in itself, considered apart from the intention, is morally good. Thus, in eating, one is not required positively to intend the support of the body, though this must not be excluded from one's intention.[1]

The difficulty put in the above question arises from this doctrine, for it would appear that sterile persons, whom the Church permits to marry and to use marriage, cannot conform to it except by having the intention of not excluding a miracle.

It may be noted, in the first place, that the object of the marriage contract, as in canon 1081, §2, is actions fitted of themselves for procreation, and the common doctrine we are examining is sufficiently upheld if this object is not positively excluded from the intention of the agent. If, for the sake of argument, a married man who is infertile excluded from his purpose, when exercising marriage rights, the intention of performing an act fitted of its nature for generation, he would be doing wrong.

But, it may be urged, the man in the above question docs not exclude from his intention the content of canon 1081, §2, but he docs voluntarily exclude the end to which this action is directed, namely procreation, and he does so because nature has decreed him to be infertile. The answer must be, we think, that if nature has so decreed, then he can voluntarily neither do nor intend anything whatever about it. 1 lis action is *per se* fitted for its primary puqiose which *per accidens* is unattainable. Thus Heylen, *De Matrimonio* (1945), P· M9: "Matrimonium autem inire et eo uti possunt qui sunt steriles et senes, quia, quantum pendet ex eorum voluntate, primarium finem non excludunt et opus per se manet ordinabile ad finem suum, quamvis per accidens proles non sequatur."

1 Cf. Bouquillon, *Theot. Moralis Fundamentalis,* §361; Prümmcr, *Tbeol. Moralis,* III, §692; Dc Smct, *De Matrimonio,* §209.

**404.—** Artificial Insemination

*Does the condemnation of the Holy Office cover the case where the husband's semen is obtained without causing solitary pollutioni*

*S.Off.,* 24 March, 1897: An adhiberi possit artificialis mulieris fecundatio? *Resp.* Non licere. (This decision is quoted by Vermecrsch, *De Castitate,* n. 241 and by other manualists.)

*idem,* 2 August, 1929; *A.A.S.,* XXI, p. 490: Utrum licita sit masturbatio directe procurata ut obtineatur sperma. . . . *Resp.* Negative.

(i) The method in question is thus described by Vermecrsch, *De Castitate,* η. 88: "Sine ulla copulatione, nemaspermata ex interiori testiculorum tunica (epididymo) extrahuntur, ac dein in uxoris vaginam et uterum immittuntur." This description is accepted by Cappello, *De Matrimonio,* n. 383, and by the other writers who discuss the matter. It is a lawful method of obtaining a specimen for examination, but the point at issue is whether the wife may lawfully be impregnated with semen obtained in this way. There is, of course, no problem to discuss if the parties in question are not validly married.

It is the opinion of Vermecrsch that, in these circumstances, artificial fecundation is permissible: "haec ratio fecundationis artificialis damnanda non videtur, cum sine ullo abusu venereo, i.c. sine ulla sexuali commotione, finem matrimonii procuret." Relying on the authority of Vermeersch, some other modern writers teach the same doctrine, e.g. Noldin, *De Sexto Praecepto,* n. 77; Payen, *De Matrimonio,* n. 2114. Others arc content to record this opinion without giving any judgement upon it, e.g. Heylen, *De Matrimonio,* p. 404.

(ii) All moral theologians at the present day are under a great debt to Vermeersch, both for the range of his interests and for his skill in applying accepted principles to new problems. It is, therefore, with considerable diffidence that one ventures to dissent from his judgement in a matter of this kind.

In the first place, there arc one or two considerations which have not, perhaps, been duly weighed by those who have accepted his view. It is assumed, for example, that the decision of the Holy Office, 24 March, 1897, condemned artificial fecundation chiefly because the means thereto was unlawful, namely, solitary pollution, and it is argued accordingly that the condemnation does not necessarily apply when semen is obtained from the husband in a lawful manner. It is extremely likely that the reply was occasioned by the teaching of some theologians that masturbation for the purpose of artificial semination was lawful; the reply, however, condemns artificial fecundation itself and not merely the means thereto. Obtaining semen is an act quite distinct from its subsequent use, nor docs the word "fecundation" properly apply to any act, lawful or unlawful, which precedes its introduction into the body of the woman.

Moreover, in most instances where resort is had to artificial insemination, it is extremely likely that its necessity has arisen because one of the parties is, at least relatively, impotent. Quite important considerations will then arise affecting the validity of the marriage, considerations which the writers for the most part do not properly weigh. Cf. Priimmer, *Tbeol. Moralis,* III, §799; Gasparri, *De Aiatrimonio,* II, §1095.

Further, it is fairly evident that artificial fecundation, of the kind we are discussing, is not consummation of marriage as commonly understood by theologians and canonists, and Gasparri, *loc. cit.,* definitely holds that even artificial assistance given to semen deposited *in vaginae orificium* does not consummate marriage; *a fortiori* there will be no consummation if artificial fecundation is carried out as described in the above question.

(iii) These difficulties are not perhaps insuperable, if we are to limit our judgement solely to the natural morality of the act without considering questions of a legalistic kind which may result. But their combined effect does, in our view, add weight to the opinion opposed to that of Vermeersch, the opinion, namely, that the only lawful form of artificial fecundation, if one may loosely employ this term, consists in perfecting the passage of semen after it has been deposited within the vagina by natural intercourse between husband and wife. Cappello is the clearest exponent of this teaching: .. sine ulla cunctatione et dubitatione tenemus contra paucissimos; actus enim proprius coniugii est copula seu congressus maris et feminae, cuius finis est utique procreatio prolis, sed naturali modo obtinenda, scii, per concrcssum maritalem, quo inficiatur vitali actu sperma a viro in vaginam mulieris." The same view is held, though less strongly, by Marc-Gestermann, *Tbeol. Moralis,* II, §2118, and it is held unhesitatingly by Merkelbach, *Tbeol. Moralis,* III, §958. It is the doctrine generally taught by the manualists, and, though we must concede extrinsic probability at least to the opinion of Vermeersch, we think it would be imprudent to adopt it at the present time, when the topic has ceased to be of purely academic interest. It can be defended, if at all, only by casuistical distinctions which tend to obscure the main issue, and which will confuse the minds of any except professional theologians.

A good modern explanation, both physiologically and morally, of this question is in *I'Ami du Clergé, ïw j*, p. 815, and 1948, p. 97. Cf. also *Cahiers Laënnec,* 1946, η. ζ, where Fr Tesson observes that, whatever the moral decision may be, the method of obtaining seminal fluid by puncturing the epididymis seems quite ineffective from the medical point of view.

(iv) Some forms of insemination arc certainly permissible, namely when the conjugal act is performed by both parties in a human manner and afterwards perfected by medical skill. The lawfulness of this is taught by theologians generally, and was referred to by His Grace the Archbishop of Westminster, as reported in *The Times,* 9 April, 1945, when he excluded from his condemnation "an assisted semination of the wife after normal intercourse with her husband". There are various methods by which this assistance is rendered, and they may be called "artificial" only in a very wide sense of the word. Cf. *Artificial Human Semination,* S.P.C.K., 1948.

## 405.—Definition of Sexual Pleasure

*Is there a good definition or description of the kind ofpleasure which is to be controlled by the virtue of chastity?*

The least satisfactory point in most of the treatises *De Castitate* is the definition of what exactly constitutes sexual or genital pleasure—an important point, since for the last three centuries it has been the common

teaching that it does not admit smallness of matter. The concept of what makes up this pleasure is sufficiently understood by most people, but it is not easy to define. Fr Lumbreras gives a good description: ". . . ob veneream delectationem habita—ob voluptatem nempe qua ad fovendam conservationem speciei natura cumulavit generationis actus terminum, progressum et exordia".[1]

In the American journal *Theological Studies,* 1940, pp. 117-127, Fr Kelly, S.J., deals expressly with this fundamental notion in the problem of sex morality. His chief criticism is directed against the theory of a twofold genital pleasure, proposed by Alberti some thirty years ago and taken over by Antonelli and other writers, including, to a partial extent at least, Cappello in his treatise *De Matrimonio.* The value of the distinction is, of course, in excluding from the object matter of unchastity certain sensual pleasures or disturbances which are not, strictly speaking, libidinous.

Fr Kelly's point is that there is no scientific or theological basis for this distinction. Using the physiological language of today, the teaching of the older classical theologians can be preserved by regarding genital pleasure as applying to all those processes (whether neural, muscular or glandular) which by intrinsic finality lead to the sexual orgasm. It is an operation which begins with the first typical excitation of the genitals—that is, with the function of the erectile nerves and the turgescence of the organs, and if this organic change is present together with any of the psychic elements of passion there is what the theologians call "delectatio venerea", that is to say, it embraces all the processes which combine by natural finality to produce the sexual orgasm. "All of them, from the initial reception of the exciting cause to orgasm and satisfaction, make a natural psycho-physiological totality, and everything intrinsic to the process has generative finality and is styled *venereal."* As in this quotation, so throughout the article, the author follows the accepted common use of the word "venereal", a word which in modern English is not, perhaps, the best rendering of the Latin "venerea".

## **406.—**Parvitas Materiae

*Do any theologians still hold the view that there is "parvitas materiae" in venereal delectation directly willed? What are the arguments, briefly, in defence of this view? How came the opinion to be discarded?*

The view of all the manualists nowadays is that there is no smallness of matter, e.g. Priimmer: "Delectatio venerea directe volita extra legitmum matrimonium est peccatum mortale ex toto genere suo, ita ut non admittit parvitatem materiae."[2] P. A. Laarakkers, O.S.Cr.,[3] is the only modern author, of whom we have any knowledge, to defend the opposite thesis, which was held by many theologians before 1612: "Praecedente tali auctoritate non erubescimus thesim: Delectatio incompleta in genere luxuriae admissae vel etiam directe quaesitae, per se et in sua specie non est peccatum mortale." He defends this proposition with great skill and persuasion, but in our view, seeing the unanimity of modern theologians, it would in practice be rash to

[1] *De Fortitudine et Temperantia,* η. 249·
[1] *Tbeol. Moralis,* II, §682.
['] *Quaedam Moralia,* Cuyk, Holland, 1928, p. J4

teach this doctrine. Laarakkers, on page 72, enumerates St Antoninus, Caramuel, Diana, Martinus de Magistris, Javillus, Ledesma, Soto, Navarrus, Armilla, Corduba, Ariaga, Salas, Moija. The list is compiled from the *Salmanticenses,* from Viva on the *Condemned Proposition of Alexander VII, n.* 40, and from Sanchez *De Matrimonio.*

His arguments arc, firstly, that it is not proved from Holy Scripture that the sin is grave *ex toto genere suo;* nor, secondly, can this be established by theological reasoning: nor, thirdly, from authority, whether divine or ecclesiastical. The crux here is the condemned proposition: "Est opimo probabilis quae dicit esse tantum veniale osculum habitum ob delectationem carnalem et sensibilem, quae ex osculo oritur, secluso periculo consensus ulterioris et pollutionis."[1] The proposition, it is maintained, was not condemned for doctrinal reasons, but rather because of the evil consequences which would follow in practice. Lastly, there is no constant tradition in favour of the stricter doctrine.

He observes, with truth, that the argument against smallness of matter, namely, that if delectation of a venial character is permitted it would lead on inevitably to grave matter, applies equally to the sin of theft.

Most authors date the beginnings of what is now the common doctrine to the prohibition in 1612 by Claudius Aquaviva, the general of the Society of Jesus, which directly affected Jesuit theologians, who were forbidden to teach as probable, or even as tolerable, the opinion that venereal delectation directly sought admitted smallness of matter. Owing to the authority and pre-eminence of the theologians of the Society, the teaching became common amongst all the moralists, as Noldin states: "Ex illo tempore, haec sententia, non esse parvitatem materiae in delectatione venerea directe quaesita, inter moralistas facta est communissima."[2] A careful and conservative theologian, such as Waffelaert—who adheres to the common doctrine—points out: "Haec itaque opinio, quam nos non sumus amplexi, an sit tolerabilis necne, an improbabilis dicenda, potius iudicio ac definitioni Ecclesiae, ut decet, relinquimus."[3] The more liberal opinion has never been expressly condemned by the Church nor has it been positively rejected as improbable. Moreover, the exact signification of Aquaviva's prohibition was later interpreted by the Jesuit revisers, in the sense that a Jesuit theologian was not forbidden to absolve an instructed penitent who accused himself of venial sin against the sixth commandment because of smallness of matter.[4]

## 407.—V.D. Prophylactics

*Since the provision of safeguards against V.D. is calculated to facilitate illicit intercourse by removing the harmful physical consequences of the act, to what extent are these measures lawful?*

The various measures adopted by civil governments, with a view to preserving the public health, arc usefully summarized in *Report on Venereal*

1 Dcnz., it 40.
2 *De Sexto Praecepto* (1936), p. 13.
3 *De Virtutibus Cardinalibus,* p. 303.
4 Laarakkers, *op. cit.,* p. 73; Waffelaert, *op. cit,* p. 305.

*Diseases* (1944), *Scotland.*[1] They include some which Catholics must reject, e.g. propaganda by public instruction in schools and the issue of prophylactic contraceptive appliances. But this report and the public advertisements in newspapers, sponsored by the Ministry of Health, stress continence as the best safeguard, and—a notable admission—many of these advertisements state that abstinence is possible for all and is not harmful to health.

(i) The easiest and the safest solution of the problem is to hold that all prophylactic measures are wrong, because they are an incitement to sin, direct scandal and immediate co-operation in evil. Some Catholic writers take this line as a matter of course, influenced perhaps unconsciously by the habit of mind which looks with suspicion on all medical projects for the betterment of the race, since so many of them have been judged unlawful. But the easiest and the safest solution is not necessarily the correct one. Were it true that all sin is inevitably accompanied by temporal sanctions of a bodily or physical kind, an immediate retribution or punishment, it would be wrong to interfere with this divine order of things. It would also make the task of teaching morals a sinecure. Actually the disease is not a necessary adjunct of illicit intercourse, and the two notions must be kept quite distinct; indeed, the incidence of V.D. amongst the married and its consequences on the healthy partner, to say nothing of the offspring, alone urge us to sympathize with any measures taken by the Ministry of Health which arc not clearly forbidden by the moral law. There can be no serious objection to compulsory notification of the disease, unless the law is wrongly incident on one section of the community. On the other hand, if the medical safeguards proposed are primarily and immediately contraceptives, it is beyond dispute that their provision is unlawful.

(ii) If we restrict the question to measures (which arc not indubitably contraceptives) employed on the male *after* the risk of infection, no very serious problem is presented. The problem affecting women has been fully discussed by competent authorities under the heading *De Lotione Vaginali.* Cf. *Coilat. Br/egen.,* 1951, p. 32; Q. 416.

(iii) Measures (which arc not indubitably contraceptives) employed *before* the risk of infection by unmarried persons who, let us suppose, arc already resolved upon illicit intercourse, appear to some to be morally wrong. We cannot ourselves understand this point of view, because the line of difference between applying safeguards before intercourse and possessing before intercourse a remedy for use immediately afterwards is, morally speaking, so slight as to be negligible. The subject is not usually discussed in the manuals, and the clearest statement we have seen is the teaching of Vermecrsch in *De Castitate* (cd. 1919), n. 521, which is as follows:

(1) Quamvis, ut videtur (cf. *The Tin/es,* January, 1917), in Anglia quidam anglicani scrupulose distinxerint inter usum qui peccatum praecedat et illum qui sequatur, et priorem prohibuerint, alterum approbaverint, ambigendum non est quin etiam a peccaturo factam unctionem formalitcr inculpatam dicas. (Added in later editions: Casum non attingimus feminae quae unctione huiusmodi copulam paret infecundam) Mala profecto est fornicationis intentio, sicut semper malum est peccare; sed malum non est peccando simuj quaerere media, in se indifferentia, vitandi damnosas peccati sequelas.

[1] Cmd. 6518, H.M. Stationery Office, 6J.

(2) Pcccarct sane qui, revelando medicinam vel usum suadendo, quempiam ad peccandum induceret; sed nihil obstat quin ei qui peccare proposuit medium indices quo minore corporis detrimento peccet.

(5) Venditio sane detrectanda foret, si homines hac ratione fornicatione abstinerent. Sed tot sunt qui se periculo contagii exponunt, ut talis fructus e negata venditione sperari nequeat. Rursus id dissimulandum non est: facilis copia praeservantis medicinae pluribus timorem fornicationis auferet. Sed cum lues venerea non soli peccanti sed pluribus quoque innocentibus impendeat, ita ut malum commune vocari queat, iustissima causa habetur hanc plurium tentationem permittendi. Ceterum exigua honestas est eius qui sola morbi formidine a peccato retrahatur. Addas remedium istud etiam coniugibus prodesse posse, ita ut eius usus actionem prorsus honestam comitetur.

Génicot in *Castis,* n. 152, argues on much the same lines; also, with many reserves, Dr Janssen in an informative article, "La lutte contre le péril vénérien", in *Ephemerides Theologicae Eovanienses,* 1927, p. 29. Pending an official decision on the subject, we are in agreement with these writers.

(iv) Granted, as it appears, that the use of prophylactic measures, whether before or after intercourse, is intrinsically indifferent, we are faced finally with a problem which almost defies solution. The prophylactics to be effective must be brought to the notice of people who need them, but the advertisement of these things is Likely to be the cause of indirect scandal and the occasion of sin to many who would not otherwise contemplate illicit intercourse.

Is this moral evil to be tolerated for the sake of the community's health? The point was discussed in all its bearings by many competent witnesses giving evidence in 1921 before the *Special Committee on Venereal Disease,* and the commissioners stated, amongst other things, that it would be a moral disaster if the communication of knowledge about disinfectants gave the impression that the prevention of disease was more urgent than the avoidance of wrong-doing. With this conviction every Catholic, and indeed every right-minded person, must agree.

Some scandal there is bound to be, no matter how discreetly prophylactics arc provided, and it must be tolerated. But there is a world of difference between this outlook and the attitude which practically assumes that continence is impossible for the unmarried, and that therefore disease is avoidable only by relying on prophylactics. Health enthusiasts, eugenists and the like often run to extremes which defeat their own purpose. It is the gross public scandal caused, for example, by the wholesale and indiscriminate thrusting of "packets" upon troops, which has led some people to maintain, contrary to the view set out in (ii) and (iii), that the use and, therefore, the provision of such things is intrinsically evil.

Fr Davis, S.J., to whom everyone is indebted for his expert treatment of medico-moral problems, is quoted in the *Irish Ecclesiastical Record,* January, 1942, p. 8j, for an opinion which is, we think, correct: "My opinion, *salvo meliorijndicio,* is (1) that there is no objection to setting up ablution centres; (2) that the issue of prophylactic packets to individual soldiers *officially* will be calculated to lower the sense of public morality among soldiers and civilians. Therefore, I condemn the issuing of them. I would not object to soldiers being told where they can get the packets if they need them; (5) I agree that the issue of packets which contain contraceptives is to be condemned."

## 408.—De Linteamine Hygienico

*Aw praxis adhibendi, tempore fluxus menstrui, quaelibet instrumenta intravaginalia loco soliti linteaminis hygienici improbanda esse, propter pericula non tantum physica sed etiam moralia eidem adnexa?*

(i) Though the two notions differ, there is little practical difference between a proximate danger and a proximate occasion of grave sin. The doctrine that one may not, without grave sin, expose oneself unnecessarily to the proximate danger of grave sin[1] has its counterpart in the doctrine that a penitent who declines to avoid a proximate voluntary occasion of grave sin is indisposed for absolution.[2] One may not rashly risk one's bodily life, and *a fortiori* the same applies to one's spiritual life.

In the formulation of both principles it is irrelevant whether a person actually commits the sin, to the danger of which he has wrongly exposed himself; and in both principles it is understood that a proportionately grave cause may excuse a person from the wrong of exposing himself to danger, though it will never excuse from the resulting sin.[3]

When the danger in question is only probable, the notion of proximity recedes in proportion, and there is some disagreement in theory whether the above doctrine applies. Fabregas, S.J., in *Periodica,* 1941, p. 20, argues against the stricter teaching of Ter Haar, and maintains, even though a grave cause is lacking: "non constarc de gravi peccato in co qui vera, positiva, et solida probabilitate non labendi innixus, probabili tantum peccandi periculo se exponit". This opinion may be followed. The solution in individual cases will depend on the person's reactions to danger: penitents should be strongly advised to avoid even the probable danger of grave sin, but they are entitled to adopt the more liberal view.[4]

(ii) The action is not of its nature intrinsically evil, but is undeniably a grave moral danger for the generality of persons. No grave cause justifying the risk is easily discernible, except perhaps in the case of professional dancers or athletes. Since some women find the article convenient and experience no ill-effects, these exceptional persons are not bound to discontinue its use. The confessor, relying on the liberal opinion mentioned above, may acquiesce whenever he judges that in an exceptional case, even though grave reasons are lacking, the use of this dangerous instrument docs not result in grave sin.

## 409.—Immodest Dress

*Are there any express instructions of the Church about the duty of parish priests in the matter of women's dress?*

(i) The positive laws on the subject are given in an instruction of the *Congregation of the Council,* 11 January, 193o.[6] After making some general

1 E.g. Priimmcr, *Tbtol. Moralis,* I, §598.
» *Ibid,* III, §45»·
* Cf. Dcnz., 1211-1x13.
4 C£. Davis, *Moral Theology,* TH, p. 292.
» *A.A.S.,* 19J0, XXII, p. 212; Eng. tr. Bouscarcn, *Digest,* I, p. 212.

references to the teaching of holy scripture, previous reproofs given by the Holy See, and the efforts of many local Ordinaries directed against licentious modes of dress, in spite of derision and ridicule on the part of ill-disposed persons, the Sacred Congregation gives twelve rules. Some of these arc of a general character, e.g. the need of reproof and vigilance and the duties of parents in this rcpcct (nn. 1-3); others are directed to the superiors of Convents and other schools (nn. 4-6); pious associations of women are recommended for the purpose of influencing others by counsel and example to avoid immodest dress (n. 7). The matter is recommended especially to the diocesan council of vigilance which is instructed to discuss the question at least once a year (n. 11), and in the last rule (n. 12) Ordinaries arc required, every three years, together with their report to the Holy See on religious instruction, to inform the Sacred Congregation on the measures that have been employed to secure the observance of the present instruction.

Rules 8, 9, and 10 affect the parochial clergy. Rule 8 directs that women who are immodestly dressed arc to be excluded from pious associations. By this is evidently meant confraternities such as Children of Mary, and not, as Bouscarcn implies in his English version, merely the pious associations referred to in rule 7; clearly women immodestly dressed could not belong to an association specially founded to remedy the abuse. The parish priest, or his delegate, is usually the director of women's confraternities, and it is well within his power to apply this rule.

Rule 9 states that girls and women immodestly dressed are to be refused Holy Communion and excluded from the office of sponsor at baptism and confirmation; if judged necessary, they may be forbidden to enter the church (si casus ferat, ab ipso ecclesiae ingressu prohibeantur).

Rule 10 recommends exhortations to be given on the subject at opportune times, such as feasts of Our Lady, by priests in charge of Catholic societies and associations. Each year, if it is possible, there should be in cathedral and parish churches a similar exhortation to all the people on the feast of the Immaculate Conception.

(ii) It will be observed that the Holy See, in this instruction, makes no attempt to define what is immodest dress. What the common law leaves undefined, local legislation, especially in France, often makes more explicit, and these directions of local Ordinaries arc praised in the *proemittm* to die rules, though none is referred to explicidy. Quite often these direcdons, which one may see posted at the doors of churches, forbid women to receive Holy Communion except "en robe montant et fermée, bras couverts".[1] What is excluded at Holy Communion by these episcopal instructions is the scanty, open-necked, sleeveless blouse. This interpretation of the law is based on the practice at the Vatican, which refuses women admission to papal audiences when they present themselves so attired.[2] We do not know of any similar directions given by bishops in these islands.

(iii) In so serious a matter as refusing the sacraments, we are of the opinion that, in the absence of definite episcopal instructions, a priest acts rightly by avoiding severity in interpreting rule 9. He is certainly not entitled to refuse Holy Communion unless the dress of the person is ccr-

1 Cf. *Documentation Catholique,* 1922, VII, col. 1504—Bishop of Bayonne; 1928, XIX, col. 1564—Archbishop of Algiers; 1925, X, p. 538—Bishop of Mcncauban; 1955, XXXIII, col. 1458—Bishop of Arras.

2 Cf. *Documentation Catholique,* 1923, X, col. 537.

tainly immodest, and he may not make the criterion existing in other countries his own rule of guidance. The terms of rule 8 can usually be observed by consulting the opinions of the *maior et sanior pars* of the confraternity. In giving reproof and exhortation, in accordance with rules 1-3, he is entitled to do as his conscience directs, since the rights of the other party to the sacraments, etc., is not at stake.

## 410.—Vesture (Deuteronomy xxn, 5)

*Tbe textforbids a woman to wear male attire and "vice versa". Yet we seem to tolerate tbe practice, in stage plays, for example. Is the prohibition of Deuteronomy merely a ceremonial law which no longer binds, or is it, in some sense, a declaration of tbe natural law? If it is the latter, how can tbe practice be justified even for amusement?*

The solution of this difficulty is at once suggested from the fact that those modern authors who discuss the matter do so cither under the heading of "scandalum proximi" or of "occasio peccati". It is hard to find a clearer statement of the subject than that of St Thomas, *Summa Tbeol.,* II-II, 169, 2, ad 3: "Ad tertium dicendum, quod, sicut dictum est (art. praec.) cultus exterior debet competere conditioni personae secundum communem consuetudinem; et ideo de se vitiosum est, quod mulier utatur veste virili, aut c converso; et praecipue quia hoc potest esse causa lasciviae: et specialiter prohibetur in lege (Deut. xx), quia Gentiles tali mutatione habitus utebantur ad idolatriae susperstitionem: potest tamen quandoque hoc fieri sine peccato propter aliquam necessitatem, vel causa se occultandi ab hostibus vel propter defectum alterius vestimenti, vel propter aliquid huiusmodi."

The whole question of what is suitable clothing is a matter of custom. Between the attire of a South Sea islander and an inhabitant of Greenland there is a whole series of different modes. Without, therefore, labouring to discover what is *in se* female and what is male attire (an impossible quest), we assume that it is customary, in a given place and at a given time, for men and women to wear distinctive clothing. It is then wrong, as a general rule, for a person to appear in the vesture proper to the opposite sex. What kind of wrong? It is the wrong of doing something, in itself indifferent, which is likely to be an occasion of sin, either to oneself or to others. It is beyond dispute that the generality of people are shocked by the sight of a person masquerading as one of the opposite sex, apart from the exceptions we shall consider. It is considered lascivious and suggestive, and the reason doubtless is to be found in the obtrusive prominence of "sex" which is caused when a person of one sex assumes the guise of the opposite sex; if the disguise is perfect and complete, the occasion of sin is different but more obvious; it consists in the removal of those safeguards which, by distinguishing the sexes, restrain dangerous familiarity.

Inasmuch as the kind of clothing one wears is, in itself, indifferent, and the whole -wrong of the practice we are considering consists in its being an occasion of sin or of scandal, it is evident that circumstances may arise when, for proportionate reasons, it is permitted to run the risk. The examples of necessity given by St Thomas arc adopting a disguise to escape from the enemy, and the lack of other clothing: in general, "propter aliquam nécessita-

tcm". St Alphonsus, adopting the text of Busenbaum, writes: "Si foemina utatur veste virili, tantum ex levitate, sine prava intentione, aut periculo scandali et libidinis, veniale tantum erit; nullum vero si ex necessitate."[1]

The exception admitted for actors in stage plays may be considered one of proportionate necessity. Better still, it would appear that the practice in these circumstances is so universally understood and sanctioned by custom that the dangers are practically non-existent. But it would be a very inexperienced and confident person indeed who would maintain that the dangers are never existent, for example, in the case of amateur girl players, dressing as men in a school play. We may assume, nevertheless, that there exists in such instances a reasonable necessity.

There is, finally, the text of Deuteronomy xii, j to consider: "A woman shall not be clothed with man's apparel, neither shall a man use woman's apparel: for he that doeth these things is abominable before the Lord." Following Cajctan, whom St Alphonsus cites, this text may be considered as a ceremonial precept and no longer of binding force. But a more likely interpretation of the text regards it as a positive divine law determining, for the Jews, a precept of the natural law, in rather the same way as the law regarding sabbath observance was a determination of the natural law which requires mankind to worship God at certain times; worshipping God is the natural law; sabbath observance a positive divine law for the Jews. Or, to take another example, idolatry is forbidden by natural law; the making of images was forbidden by a divine positive law, for the Jews, because the existence of images was for them a frequent occasion of idolatry. It is certainly a natural law that wearing the dress of the opposite sex must be avoided in so far as it is an unnecessary occasion of sin, and under this aspect we are all bound by the law of Deuteronomy. In the case of the Jews, whether for the reason suggested by St Thomas or for some other reason, a positive divine law interpreted the rule more rigidly and exactly, but the positive divine law, as such, no longer binds us.[2]

## 411.—Dancing

*Is not the modern dance, with all that it implies in the way of gesture and contact, at least a remote, if not a proximate, occasion of sin?*

Christian tradition, witnessed by pastors of the Church, in ancient as well as in modern times, has never failed to warn the faithful of the dangers attached to practically all forms of dancing. The question seems to imply that if it is an occasion of sin it should not be tolerated. But this is by no means a valid deduction, for on the usual principles one is bound *sub gravi* to avoid the proximate occasion of grave sin only when it is unnecessary, that is to say, when there exists no proportionate reason for exposing oneself to the danger.

The subject opens up limitless paths of casuistry, and to keep it within limits we must eliminate any consideration of those evil circumstances which may accompany dancing, especially in public halls: evil regards and intentions,

1 *Theol. Moratis,* II, n. 52, ad 2,
3 Cf. *I'Ami dss Clergé,* 1930, p. 421«

scandal, co-operation, and intemperance of various kinds—though our contemporaries may regard as an exaggeration Cicero's "Nemo fere saltat sobrius, nisi insanit." All these things can exist without dancing, and our judgement is more likely to be balanced and correct if we keep to the well-tried path of scholastic ethics by examining the *finis operis* of this action.

We are in the excellent company of St Alphonsus with the principle: "Choreae, nisi malo fine fiant, etc., secundum sc non sunt malae, nec actus libidinis sed laetitiae."[1] Similarly, St Francis de Sales in *The Devout Life,* III, c. 33, opens up the subject by stating that dances are in their nature indifferent, a view for which he was criticized by some contemporaries, and which he defended in his introduction to the *Treatise on the Lore of God.* It is clearly of the utmost importance that our Catholic youth should not get the impression that the moral teaching of the Church is enveloped in gloom.

It could be observed, and with evident truth, that these saints were not referring to *modern* dances, but to the very proper folk-dances of the period. Some writers like Ter Haar,[2] who gives a careful and what might be called a broadminded survey of the subject, think that the dances of the previous century, the waltz or the polka, are comparatively harmless. But here is the interesting point: many who wrote when these ancient steps were recent condemned them for practically the same reasons as some contemporary theologians condemn the modern dance. Thus Gury, *Theologia Moralis,* 1910, I, n. 242: "Choreae inhonestae possunt . . . esse graviter illicitae, ut patet. Inter illas autem a multis recensentur saltationes rcccntiores, quae gallicc dicuntur la Valse, la Polka, le Galop et aliae istis similes." Things like the polka are now, it seems, outmoded altogether, except when occasionally performed as a satire on the antics of our poor parents.

What is the essential objection to certain modern dances, as distinct from objections to all dancing regarded as an occasion of sin? It is that the *finis operis* of the gestures and actions pertains, more or less blatantly, to carnal intercourse. If this allegation is true, the modern dance is then simply a rhythmic variation on a very ancient theme, or in the language of theologians "actus mutuus inconsummatus in genere luxuriae", and our judgement upon it must be the same as upon any act of this kind; there is scarcely any casuistical problem to discuss. "Choreae istac modernae, ex intentione indubia inventorum repraesentant et simulant non quaelibet amatoria facta, sed plus minusve aperte copulam carnalem . . . sunt evidenter tales actus copulam figurantes plerumque suo fine operis inchoatio actus consummati seu a natura delectabiles facti quatenus ad copulam conducunt."[3] Judging from an occasional example of professional dancing exhibited on the screen, it is our opinion that some modern dances certainly answer to this description.

But it may, wc think, be doubted whether it can be said that all modern dancing, as performed by the public, and often by good Catholics, is necessarily of this character. Even a slow, old-fashioned waltz may be danced in a sinfully immodest manner, and the excessive intricacies of some modern step may well make it less luxurious than it appears to be. There exist many condemnations by popes and bishops directed against "modern" dancing in general, but wc cannot remember any specified dance being mentioned by

[1] *Tbtol. Moralis,* DEL n. 429.
[2] *De praecipuis buius aetatis peccandi occasionibus, 195%* η. ιοi.
[3] *Collât. Brugen.,* χχνζ p. jjo. Cf. also IVth Prov. Council of Malines, 1920, η. 59

name as necessarily and intrinsically wrong in itself, whereas the Church does not hesitate to specify other actions *in genere luxuriae* which arc indisputably wrong.

A priest would act wisely by exercising a similar discretion and by assuming, unless the opposite is manifest, that modern dancing, though indeed a frequent occasion of sin, and to be dealt with as such on the usual principles in the confessional, is not to be regarded universally as in itself a gravely sinful action.

### 412.—Parental Sex Instruction

*Where is the teaching of the Holy See on this subject to befound?*

(i) Pius XI, *Divini Illius,* 51 December, 1929. English translation, *C.T.S.* (S.99), p. 31.

(ii) *Holy Office,* 21 March, 1931. *A.A.S.,* XXIII, p. 118.

(iii) Pius XII, Allocution addressed to the Catholic women of Italy, 26 October, 1941. English translation by Canon Smith in *The Clergy Review,* XXII, 1942, p. 152, later published by C.T.S. "The Pope Speaks to Mothers" (S.i68), p. 11.

The essential portions of these three pronouncements are contained in a C.T.S. pamphlet, "Training in Purity" (S.113), p. 3. We deduce from them that the Church condemns imparting to children information on sexual matters of a purely secular character, divorced from religion and the supernatural motives for preserving chastity, and that the chief means of educating the young in chastity are prayer, the sacraments, mortification of the senses and devotion to Our Lady. But ignorance must be dispelled whenever necessary, by instruction on the facts of life, to be given discreetly, religiously and privately, by the parent or some other person whose duty it is to train the young in the practice of religion. The best book on the subject is by Fr J. Leycester King, S.J., *Sex Enlightenment and the Catholic* (Burns Oates, 1944).

*It is the teaching of the Holy See, repeated in many pamphlets, that the instruction given by parents to their children "should not descend to details". What exactly is the force of these words? It would seem that this instruction, if it is to be of any use in dispelling ignorance, must necessarily be detailed.*

*Divini Illius,* 31 December, 1929: Quapropter magnopere interest, ut prudens pater, si quando de lubricis istiusmodi rebus cum filio colloquatur, bene attendat, neque ad hoc deveniat ut fere sub aspectum subiiciat artes singulas quibus horrenda eiusmodi pestis tam magnam orbis partem veneno suo inficit, ne, dum libidinis ignes restinguere aggreditur, eos potius in tenerioribus puerorum animis aut sopitos suscitet aut plane incendat.

The relevant words "bene attendat. . . inficit" appear as follows in the versions:

Italian official text: . . . stia bene awertito, e non discenda ai particolari cd ai vari modi, con i quali quest'idra infernale avvelena tanta parte del mondo. . . .

English official text (C.T.S., 1930, p. 32):... should be well on his guard and not descend to details, nor refer to the various ways in which this infernal hydra destroys with its poison so large a portion of the world. . . .

Canon Smith's translation (C.T.S., 1945, n. 78): . . . should be extremely careful and not describe in detail the various ways in which this infernal hydra infects so great a part of the world with its poison. . . .

The phrase in the papal encyclical is itself a quotation from Silvio Antoniano, *Dell'educatione cristiana dei figliuoli,* II, c. 88. In it the parent receives a twofold warning: not to descend to details and not to describe the various kinds of sexual sin. In the Latin text which appeared later, the quotation is so rendered into Latin that these two warnings appear as one; Canon Smith's translation is from the Latin, but the Italian variation is given in a footnote.

Since the Latin is, we suppose, the authentic text, our questioner's difficulty may be met by a reference to the Latin: the parent must be careful when instructing his children about the marriage debt, but the warning about details refers to sexual sins. Even if we retain the words quoted from Antoniano, and understand the details to refer to the marriage debt, the meaning cannot be that the parent is recommended to avoid explaining the essentials of what canon 1081, §2, defines as "actus in se aptos ad prolis generationem". For it is precisely in order to dispel ignorance about the nature of these actions that the parent is instructing the child. Explicit and clear information about the essential character of marital intercourse is not a detail but the very substance of what the parent is setting out to give. The details which the parent is advised to avoid, in the Italian text, will then refer to the circumstances accompanying the action.

## **413.**—Divorce Co-operation

*Inasmuch as civil divorce is on the increase in every country of the world, what is the present state of theological opinion with regard to the lawfulness of assisting at these proceedings in the capacity ofjudge, advocate, solicitor, etc.?*

(i) The question raised is too large to answer adequately in reference to everyone mentioned. We keep it within reasonable limits by passing over the question of co-operation on the part of lesser officials, and confining ourselves to the position of the judge, which is really the crux of the whole matter. As in every question of co-operation in evil, the point at issue is whether the pronouncement of a civil divorce is instrinsically evil. If it is, then we cannot tolerate it for any reason whatever. If it is not, it may be tolerated *remoto scandalo,* etc., in certain given circumstances.

The first inclination of any Catholic, whether he is a theologian or not, is on the side of regarding such an action as intrinsically evil. It appears to be an attempt to set aside the natural law by which marriage is indissoluble, a law solemnly reaffirmed by Christ and inflexibly maintained by the Church. The very fine answers given by a staunch Catholic, Judge Arthur O'Connor, K.C., before the *Royal Commission on Divorce* in 1912, are worth recording again: "I am a Catholic and therefore I do not recognize that there is any authority in any human tribunal to dissolve a marriage once validly contracted."

Question: "Would you say . . . the stipendiary magistrate would be a more suitable person than the County Court Judge

"My inind cannot entertain the idea of anybody being a suitable person."

Question: "Do you consider that it is within the range of practical politics to get the Act of 1857 repealed?"

"That reminds me of a passage of a judgement very recently given by a Lord Justice of Appeal: 'The wisdom of one Parliament may seem folly to the next and the declaration of the former may be set aside by the latter, and yet the law of God remains unchanged and unchangeable.' "

Question: "The State has recognized (I do not say the Church) that divorce should be open to all classes of the community."

"Yes, but if an Act of Parliament were passed conferring on me jurisdiction and authority to declare a marriage dissolved, I should have to regard it as I should an Act that purported to repeal the Ten Commandments."

Question: ". . . Ought not all classes to have the advantage of obtaining the benefits that that law confers?"

"That is assuming they are benefits. ... If such an Act of Parliament as is suggested were passed, it would take some time to pass it, I suppose, and by that time I might be considerably more fit for the retired list than anything else; but if I were not I am afraid there would be a vacancy on the County Court Bench."1

The doctrine so ably expressed by this old Ushaw boy is the doctrine of most of the older theologians and, notably, of Cardinal Gasparri.2 It is expressed in many instructions of the Holy See3 and has everything to recommend it, in ordinary circumstances.

(ii) Nevertheless, even though the doctrine is expounded with a certain misgiving, it must be remembered that, in the teaching of other authorities, including most of the modern manualists, the pronouncement of a civil divorce is not an intrinsically evil action. It gives scandal, so grave that the Church has at various times absolutely forbidden it; it opens to the divorced parties the occasion of a sinful adulterous union; most of all, it appears openly to flout the moral law and centuries of Christian tradition. How, then, can we avoid concluding that it is intrinsically evil? By distinguishing between the bond of marriage which is indissoluble by the natural law and the civil effects which arc at the disposition of the civil ruler. The judge, in pronouncing a decree, dissolves the civil effects of marriage, but the *vinculum* remains, and if the parties use their civil freedom to contract a second adulterous union the sin is on their conscience alone.

This distinction was rejected by the Holy See in an answer to the French Bishops, 27 May, 1886,4 but it was declared a few months later by the Belgian Nuncio that the answer was not meant to apply to Belgium.5 Also, an answer of the *Sacred Penitentiary* to the Bishop of Luçon in the following year favours the liberal interpretation.6 What appears at first sight to be a

1 Afzw/r/, Vol. II» 123 54-12389.
2 *De Matrimonio** §1554.
3 Cf. *Did. Tbiol.** IV, col. 147J.
4 *Fontes** η. i io x .
5 De Snict» *De Matrimonio,* §398, n. 1.
6 The text of these Roman decisions arc conveniently grouped together in Ilcylcn, *De Matrimonio** p. 369.

series of conflicting instructions is easily explained if it is remembered that the replies necessarily took into account the localities and circumstances of various places. If the Holy See could rely on every judge in Christendom being of the calibre of Judge O'Connor, then, without a doubt, the granting of civil divorce decrees would have been universally forbidden. But, on reflection, it can be seen that there exist the gravest reasons why the action should sometimes be tolerated; the reasons are not only those of a private nature, affecting the material good of individual judges, but reasons affecting the public good as well. If the action is gravely and intrinsically wrong, it might mean, in some places, that the judicial bench would be closed to every Catholic.

The answer to the question, therefore, is that much modern theological opinion favours the view that the action of a judge who pronounces a civil divorce is not intrinsically wrong. It must be left to the ecclesiastical authority of a country to decide whether, in all the circumstances, it may be tolerated, and, in the absence of any official pronouncement, individual priests should be extremely reticent in passing any sort of judgement on an actual case. In addition to the authors already quoted, here is one of the most recent theological judgements on the matter: "Practice, igitur, seclusis specialibus adjunctis aut positiva prohibitione Ecclesiae, non videntur reprobandi judices catholici sententiam divortii ferentes, dummodo opportune scandalo remoto et adhibitis mediis omnibus, quae moraliter adhiberi possunt, ut conjuges a divortio abstineant et reconcilientur, aut saltem simplici separatione corporum contenti sint, tunc tantum pronuntient locum esse divortii, quando vi evidentis tenoris legis stricte intellectae aliter facere nequeunt."[1]

Dr J. P. Kelly, writing in the American journal, *The Jurist,* 1944, p. 282, and 1946, p. 232, is rather stricter in his interpretation than most canonists, but he agrees that this judicial action can be permitted in certain contingencies and with appropriate safeguards.

## §6. CONTRACEPTION

### 414.—Contraception and Marriage Consent

***If** the two parties to a Marriage agree beforehand that they will take means to avoid having children, does this intention invalidate the marriage?*

An intention of this kind will invalidate the contract if it is established that one of the parties has excluded the *right* to normal intercourse, defined in canon 1801, §2: "Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem." On the other hand,

[1] Hcylcn, *De Matrimonio* (1945), p. 37-4·

if it is established that the intention referred not to the right but to the *use or abuse* of the rights contracted, it is certain that the contract is valid. The distinction between *right* and *use* enters very closely into canonical jurisprudence when a decision has to be given by an ecclesiastical court on the validity of marriage consent, and though the distinction is not easy to discern, legal presumptions are used to aid the judicial mind in coming to a decision: thus, the absolute and perpetual exclusion of actions fitted in themselves for generation gives rise to a presumption that the right itself was excluded, unless this presumption can be proved not to apply. We refer the reader to *The Jurist* (Dr. Hammill), 1948, VIII, p. 170, where the point is fully discussed and illustrated by selected Rotal judgements.

*IVhat are the duties of a priest investigating a marriage when he discovers that one or both of the parties intend to practise contraception?*

*S.C. Sacram.*, 29 June, 1941, n. 9: Non desunt enim alicubi, praesertim in magnis urbibus, qui, spreta canonica lege, nuptias inire praesumant adiecta aliqua conditione aut intentione, connubii sive suspensiva sive irritativa, quae effugium suppeditare queat ad iugum postea excutiendum, novas nuptias conciliandi causa . . .

Nupturientes autem omni studio conctur parochus, si casus intersit, avertere ab expositis intentionibus et conditionibus matrimonio adiiciendis eosque inducere ad retractandas forte iam adaectas.

*Alleg. I,* n. 16: Si nupturiens declaraverit intentiones aut conditiones huiusmodi se adiecisse aut velle adiicere nuptiis ineundis, ad has retrahendas omni studio eum inducat parochus; quod si ille renuat, eum ab ineundo coniugio dimittat. Si contra recedat, mutatae voluntatis declarationem signet in actis. Tum postulet utrum noverit de conditione aut intentione aliqua id genus et quanam forte apposita aut apponenda ab altera parte, et, casu affirmativo, eadem servet cum hac altera parte.

In this instruction from the *Congregation of the Sacraments*, the Ordinary is recommended to make local regulations in the sense outlined in the two above extracts, if he judges it to be expedient, in which case every priest investigating marriages will have to put the questions as directed by the Ordinary.

In places where the Ordinary has not seen fit to do so, the instruction provides, nevertheless, authoritative guidance for the priest, whenever he detects a condition or intention contrary to the substance of the marriage contract.

Intentions and conditions which interfere with the primary purpose of marriage, the procreation of children, do not necessarily invalidate the contract unless the *right* to normal marital relations is withheld, and it is often most difficult to decide whether this is so in a given case. Cf. Q. 274 dealing with the safe period intention. There is at least the possibility in all such cases that the marriage consent will be invalid owing to an intention *contra bonum prolis.* The investigating priest will then, in our opinion, be well advised to adopt the suggestion in *Alleg. I,* n. i6, even though he has received no express directions to this effect from the Ordinary. For he is bound to do what is possible to secure a valid marriage consent from the parties, and the suggestions contained in the instruction are most apt for this purpose.

## 415.—Co-operating in Contraception

*What is the official teaching of the Church on the lawfulness of an innocent party co-operating in this sin?*

*S. Poenit., }* Aprilis 1916: Utrum mulier actioni mariti, qui ut voluptati indulgeat, crimen Onan aut Sodomitarum committere vult, illique sub mortis poena aut gravium molestiarum minatur, nisi obtemperet, cooperari licite possit? *Resp. (a)* Si maritus in usu coniugii committere velit crimen Onan, effundendo scilicet semen extra vas post inceptam copulam, idemque minetur uxori aut mortem aut graves molestias, nisi perversae eius voluntati sese accomodet, uxor ex probatorum theologorum sententia licite potest hoc in casu sic cum marito suo coire: quippe cum ipsa ex parte sua det operam rei et actioni licitae, peccatum autem mariti permittat ex gravi causa quae eam excusat: quoniam caritas, qua illud impedire tenetur, cum tanto incommodo non obligat.

(Z>) At si maritus committere cum ea velit Sodomitarum crimen, cum hic sodomiticus coitus actus sit contra naturam ex parte utriusque coniugis sic coeuntis, isque Doctorum omnium iudicio graviter malus; hinc nulla plane de causa, ne mortis quidem vitandae, licite potest uxor hac in re impudico suo marito morem gerere. Miraturque vehementer S. Poenitentiaria, quod opposita sententia, cum humanae naturae dedecore, in quorumdam sacerdotum animis (ut refertur) insidere potuerit.

*S. Poenit., }* Junii 1916: 1. Utrum mulier, casu quo vir ad onanismum exercendum uti velit instrumento, ad positivam resistentiam teneatur? 2. Si negative, utrum sufficiant ad resistentiam passivam ex parte mulieris cohonestandam rationes aeque graves ac pro onanismo naturali (sine instrumento), vel potius omnino necessariae sint rationes pergravissimae? 3. Utrum, ut tutiori tramite tota haec materia evolvatur et doceatur, vir talibus utens instrumentis, oppressori vere debeat aequiparari: cui proinde mulier eam resistentiam opponere debeat, quam virgo invasori. *Resp.* ad primum: Affirmative. Ad secundum: Provisum in primo. Ad tertium: Affirmative.

The substance of these replies, first given by Marc, is found in all the manuals, and it may be useful to have the complete text taken from Batzill, *Decisiones Sanctae Sedis De Usn et Abusu Matrimonii,* n.xvi and xvii.[1]

The distinction between the two types of action is evident. In the case of the husband employing instruments or other unnatural practices, the principle permitting co-opcration for grave reasons cannot be applied, since the action is intrinsically and gravely wrong in itself, both on the part of the woman and of the man. Proceeding from the familiar to the unfamiliar, the *Sacred Penitentiary* directs that the woman's obligation of resistance is precisely the same as that of a virgin threatened with rape. "Confessarius ne permittat uxores passive sc habere . . . nisi talia velificarentur adiuncta rara, in quibus liceret virgini oppressae se passive habere, scii, ubi gravissima damna timentur et removetur periculum proximum consensus in pollutionem."[2]

The matter is excellently summarized in η. 84 of the IVth Provincial

1 Marictti, 1937. P· 29·
1 Génicot-Salsmani, *Tbeol. Moralis,* II, §550.

Council of Malines[1]: "Uxor vero cjuac contra voluntatem suam viro onanisticae praxi addicto cooperari adigitur, si maritus involucrum adhibeat, cooperationem utut materialem praestare non potest, quia huiusmodi actus in se pervertitur: ob timorem gravissimi mali, puta mortis vel alius aequiparandi, ipsi licet non resistere oppressori. Quodsi maritus copulam exerceat cum retractu, uxor potest relate ad viri peccatum permissive se habere, gravem ob causam, secluso scandalo et etiam qualibet provocatione directa vel indirecta ad onanismum."

The teaching of *Casti Connubii* must be interpreted in the light of the above texts: Optime etiam novit Sancta Ecclesia, non raro alterum ex coniugibus pati potius quam patrare peccatum, cum ob gravem omnino causam perversionem recti ordinis permittit, quam ipse non vult, cumque ideo sine culpa esse, modo etiam tunc caritatis legem meminerit et alterum a peccando arcere et removere ne negligat.[2]

## 416.—De Lotione Vaginali

*A Conference Case "De Abusu Matrimonii" proposed, amongst otherproblems, a discussion of the lawfulness of the following action. "Anna post nuptias ini enit maritum suum morbo venereo affectum esse, inde ex redditione debiti ipsi et proli concipiendae imminet periculum contagionis. Quum autem maritus minetur quod eam deserturus sit nisi debitum reddat, infelix mulier copulam cum ipso admittit, sed statim a copula lotione vaginali utitur ut a contagione se praeservat." Opinion was sharply divided and a solution of the question would be appreciated by many.*

The question had been discussed for some time when, in 1922, the Rcdemptorist theologian, Fr Damen (the redactor of the well-known Moral Theology of Aertnys), gave a solution in *N.K.S.,* 1922, which has often been reprinted in other journals, e.g. *Ecclesiastical Review,* 1922, LXVII, p. 501. Owing to the great authority of the writer, as well as to the intrinsic value of his argument, his doctrine has been widely accepted. His conclusions were:

(i) Graviter illictum est statim post copulam irrigare vaginam ea intentione ut semen expellatur vel uterus claudatur vel spermatozoida (ope aquae ad hoc praeparatae) cncccntur itaque conceptio evitetur.

(ii) Etiam praeclusa intentione prava, per se graviter illicitum est statim post copulam irrigare vaginam.

(iii) Per accidens, seclusa tamen semper quavis prava intentione, licita fieri posse videtur lotio vaginalis, copulam immediate subsequens, ob rationes particulares. ... Prior causa est, si mulier copulam admittere cogatur ex parte viri syphilitici vel alio morbo contagioso affecti.

The justification of the practice in question is no more than an application of the familiar principle establishing the lawfulness of performing an action from which two effects follow, the one good and the other bad, provided the immediate object is good, the intention of the agent good, and a proportionately grave reason present. The case, and all similar cases to which the principle is applied, turns on verifying each of these conditions. There can be little doubt that they are verified in the case under discussion.

[1] Dcssain, 1925, p. 54.
[2] *A.A.S.,* 1930, XXU, p. 561; C.T.S., p. 28 and new translation, n. 59.

It is unlawful to do an indifferent action which results in the prevention of fecundation, unless there is some proportionately grave cause. A grave cause certainly exists in the case of a woman who is forced to run the risk of being infected with disease. But, even in this extreme case, it must be shown that the action is not in itself evil, but is merely an action with a double effect, and that the good effect is intended and immediate while the bad effect is merely tolerated. In this case the good, immediate and intended effect is the ejection of bacilli, while the ejection of living spermatozoa is merely tolerated. It is supposed, of course, that there exists no efficient means of ejecting the bacilli without, at the same time, ejecting the living spermatozoa. "In eo casu habetur actio cum duplici effectu aeque immediate sequenti, videlicet sterilizatio vel et ejectio bacillorum et ex alia parte sterilizatio vel et ejectio spermatozoidorum. Prior effectus intenditur ut medium vitandi contagionem, alter tantummodo toleratur. Supponimus non dari medium efficax quod occidat bacillum quin noceat semini."[1]

Many theologians, however, do not accept Fr Damen's conclusions, except with reservations as to the length of time which must intervene, which is estimated variously from one to six hours.[2] Also, Fr Damen himself in the current edition of his Moral Theology[3] writes with far less assurance. After stating that it is permissible after three hours he continues: "Utrum per accidens citius peragi possit, pendet a quaestione utrum umquam rationes sufficientes habeantur, quae eo tempore irrigationem cohonestant, non quidem ad frustrandum semen (quod nunquam licitum est) sed ad aliquem alium effectum utilem obtinendum, tolerando effectum frustrationis seminis. De facto huiusmodi rationes nonnisi perraro occurrent." In our opinion the doctrine as formulated by him in 1922 is at least probable, and may safely be followed.

### 417.— Sale of Contraceptives

Frozv *the doctrine of most manualists the sale of a thing which is intrinsically evil is wrong "in se" and can never be permitted. Must this doctrine be rigidly applied to the case of a chemist's assistant selling contraceptives? Since his refusal would mean loss of employment, it would be useful to know if there is any possible way out of the difficulty. Would a confessor be bound to refuse absolution unless the chemist's assistant promised to give up his means of livelihood?*

There is no principle vrhich leads more easily to the tortuous paths of casuistry than the principle permitting material co-operation in another's sin, for a grave reason, and forbidding formal co-operation for any reason whatever. If the action of the chemist is to be judged lawful, it must be shown that it is only material co-operation in the sin of the purchaser. The fact that, if the article is not sold by this chemist, it can be bought quite easily elsewhere, is not strictly relevant to the moral nature of the action we arc considering. Also, it is necessary to assume that the articles sold have no other possible use except an evil one.

[1] *Collat. Britgen^* 1951, p. 32.
[3] *Irish Ecclesiastical Record,* 1943, LXI, p. 267.
[1] *Tbcol. Moralis* (cd. 1947), II, §898.5.

Formal co-operation is usually described as assisting in a sinful action and intending its sinfulness, e.g. adultery; it is material when there is no evil intention and when the action is not in itself sinful, e.g. selling drink to one who will drink it to excess. Immediate co-operation is understood to consist in taking part in an action which is in itself sinful, even though there is no internal approval of what is being done, e.g. active assistance at heretical rites whilst disapproving of the sect. Immediate co-operation is always intrinsically wrong, the exceptions in the question of certain acts of injustice being only apparent.

The authors do not all employ these terms in quite the same sense.[1] But their doctrine is, of course, the same, and to the present writer it has always seemed easier to approach these questions of co-operation by applying the simpler principle of the double effect *{voluntarium indirectum* or *voluntarium in causa).* It is lawful, namely, to do an action from which two effects follow, the one good the other bad, provided the immediate object of the action is indifferent, the intention good, and there is a proportionately grave reason. Putting on one side the intention and the grave reason as being of secondary' value in the problem, the kernel of the inquiry is then to discover whether the action is, of itself and intrinsically, good or at least indifferent. In some cases the inquiry is not easy, as in the present question. There are three possible solutions to the difficulty.

(i) The manualists class the sale of an object which has no other purpose, except an evil one, as a sinful action. "Qui conficiunt vel vendunt *res in se malas,* v.g. media ad impediendam conceptionem, quae bonum usum ncc habent nec habere possunt, nunquam a peccato formali co-operationis excusari possunt."[2] "Nunquam licet vendere res, quae ex ipsa natura sua non habent nisi usum malum. Hinc, c.gr. non licet vendere illa instrumenta quae inserviunt ad abusum matrimonii."[3] This is the common doctrine, and by adhering to it one is sure of being on the side of the angels. There is no risk of being regarded as a trimming, hair-splitting casuist, and since a writer on moral theology, like most people, wants a quiet life, this is the solution which is generally adopted. But when it comes to applying it rigidly to an unfortunate chemist's assistant, faced with penury', the confessor has more than a little misgiving. If possible, he should leave a penitent in good faith about the matter. If this cannot be done we must pursue the inquiry a little further.

(ii) Noldin completes the text already' quoted as follows: "Ad summum pro adiutoribus, qui solum ex mandato mercatoris vendunt nec officinam relinquere possunt sine gravi incommodo, aliqua excusatio valere potest, quia remotius et quasi coacte cooperantur." He does not say so expressly, but he appears to mean that the action is wrong, but the circumstances arc such that it can scarcely' be a mortal sin. If it is not a mortal sin, the confessor can deal with it exactly' as he does with venial sins in general. The conclusion that it is no more than a venial sin is expressly defended by a writer in the *Catholic Medical Guardian,* July, 1932› P· 158, and we think that this is a correct and a iust solution.

It is agreed amongst all the writers that the owner of the business cannot

[1] Cf. *Irish Theological Quarterly,* 1922. XVII. p. 12; Prummcr, *Tbeol. Moralis.* I, §617; Noldin, *Theo!. Moralis,* II. §117; Davie, *Moral Theology,* I, p. 34».

[2] Noldin, *Tbeol. Moralis, П,* §123.

[3] Prûmmcr, *Tbeol. Moralis,* I, §623.

be excused from grave sin. It appears to us, in addition, that an assistant could not, without grave sin, serve in a shop devoted entirely to the sale of contraceptives. The scandal would be too great and could never be effectively removed. But the real problem is the case of an assistant in a general chemist's shop, and there are very few of them nowadays which do not stock contraceptives for customers who want them.

(iii) A writer in *l'Ami du Clergé*[1] is more courageous. The doctrine defended is that the action in itself is indifferent. From this it does not follow that it can always be done without sin, of course. But once the intrinsic indifference of the act is established a prudent judgement may decide on the gravity of the cause, the extent of the scandal, and the measures taken to remove it. The point of the writer is that the immediate essential object of the sale is to transfer, as an agent, the property from the proprietor of the shop to the buyer; the fact that the property is of its nature such as to have no other use but an evil one is accidental to the action. It is argued very fully, but it is noticeable that no author is quoted, except as dealing with the theoretical principles.

### 418.—Contraception and Good Faith

*Is it true that some manuals of moral theology teach the lawfulness of allowing certain people to remain invincibly ignorant concerning the malice of birib control?*

In describing a book entitled *A Manual for Confessors,* by F. G. Belton, B.A., F.C.S., Hon. Canon of Birmingham Cathedral,[2] the reviewer wrote: "It is now well known that some Roman Catholic text-books of moral theology use language which suggests that relief from the total prohibition of contraceptives may be found in the principle of 'invincible error'. And it is certainly true that, in the hands of a wise confessor, this principle is of exceptional value as a safeguard against legalism; while a lax appeal to it may easily produce moral chaos. The one notable flaw in Canon Belton's book is his failure to bring the importance of this whole question of conscientious error to the notice of his readers."[3]

I am not familiar with Canon Belton's book. It is, I believe, of considerable authority amongst our Anglican brethren and, if it at all resembles other books of this type, the author probably relics very considerably upon the writings of Catholic moral theologians. He appears to have studied them more profoundly than his reviewer has done, and his alleged failure to appreciate their principle of "invincible error" may be, in reality, a very fruitful result of his reading. For the doctrine of the moral theologians has passed through a certain development during the last half-century, keeping pace with the growth of this vice, but their teaching on the matter and on the kindred subjects of sterilization and abortion, following the instructions of the Holy See, has developed in the direction of strictness, not of laxity. In many other moral questions, but not in this one, a tendency towards a liberal interpretation of the law can sometimes be observed.

1 >954. P· 455·
193 X»
'*Church Times,* 25 November, 1931.

The grave admonition in the Encyclical *Casti Connubii* does no more than repeat and stress the accepted doctrine. "We admonish, therefore, priests who hear confessions and others who have the care of souls, in virtue of Our supreme authority and in Our solicitude for the salvation of souls, not to allow the faithful entrusted to them to err regarding this most grave law of God; much more, that they keep themselves immune from such false opinions, in no way conniving in them. If any confessor or pastor of souls, which may God forbid, lead the faithful entrusted to him into these errors or should at least confirm them by approval or guilty silence, let him be mindful of the fact that he must render a strict account to God, the Supreme Judge, for the betrayal of his sacred trust, and let him take to himself the w'ords of Christ: 'They arc blind and leaders of the blind: and if the blind lead the blind, both fall into the pit' (Matt, xv, 14)."[1]

That penitents should sometimes rather be left in good faith, due to invincible ignorance, than be informed of their obligations and be put henceforth in bad faith, is a valuable principle in the guidance of souls. The authors always suppose that it is going to be employed by a prudent man, and a prudent man will make sure that he understands the principle before he attempts to apply it. Otherwise he is a reckless, dangerous and blind guide, a peril to himself and to the faithful. Amongst other conditions for the right use of this principle, it can be applied only to clear cases of invincible ignorance, where no good will result from giving information, and where the priest's silence will not be a cause of scandal. Now, whatever may have been the situation a few years back, it is almost inconceivable that any Catholic should nowadays be blissfully and inculpably ignorant of the fact that the Church condemns the use of contraceptives as a grave breach of the natural law. The subject is discussed by judges, journalists and novelists, and every man in the street knows that the Catholic Church is the determined enemy of contraception. Moreover, it is scarcely conceivable that a confessor's silence could be anything else but a cause of scandal.

The rule, therefore, is that a confessor cannot allow penitents to continue in this vice undisturbed, as the Holy Sec has explicitly declared: "I. Quando adest fundata suspicio, pocnitcntem, qui de Onanismo omnino silet, huic crimini esse addictum, num Confcssario liceat a prudenti et discreta interrogatione abstinere, eo quod praevideat plures a bona fide exturbandos, multosque Sacramenta deserturos esse? Annon potius teneatur Confcssarius prudenter et discrete interrogare? II. An Confcssarius, qui, sive ex spontanea confessione, sive ex prudenti interrogatione, cognoscit, pocnitcntem esse onanistam, teneatur illum de huius peccati gravitate, aeque ac de aliorum peccatorum mortalium, monere, cumque (uti ait Rituale Romanum) paterna charitate reprehendere, ciquc absolutionem tunc solum impertiri, cum sufficientibus signis constet cumdem dolerc de praeterito, et habere propositum non amplius onanistice agendi? *Resp.* Ad I. Regulariter negative ad primam partem; affirmative ad secundam. Ad II. Affirmative juxta doctrinas probatorum auctorum."[2]

The moral theologians have interpreted the word *regulariter of* this answer in the sense that it is, theoretically at least, possible to imagine a case in which good faith exists, owing to complete invincible ignorance of the malice of

[1] C.T.S., p. 27. Latin text in Q.419.
[1] J. *Poenil.,* 10 March, 1886. The full text is in Batzill, *Derisiones S. Sedis,* p. 22.

the action, together with all the other conditions necessary before the principle can be applied.1 The exception from the common rule refers solely to the case of allowing a confessor to remain silent and refrain from questioning a penitent suspected of this vice. A priest who refuses to instruct when asked is committing a grave wrong, and if he were to tell penitents that they could continue in the vice (which, as the Holy Father says, may God forbid) he is liable to grave ecclesiastical penalties, as discussed in Q. 420.

Whatever, therefore, may be the value of the principle concerning invincible ignorance and good faith, one must be very slow to apply it to the matter under discussion, because the conditions for its lawful exercise are scarcely ever verified and, as time goes on, I imagine that all mention of this rare and rather theoretical exception will disappear from the manuals of moral theology.

## 419.—Confessional Interrogations

*May the confessor interrogate, on the subject of their marriage relations, all married penitents in a district where the practice of contraception has reached alarming proportions? May the parish priest, in similar circumstances, instruct his assistant priests to do likewise?*

*Casti Connubii,* 31 December, 1930: Sacerdotes igitur, qui confessionibus audiendis dant operam, aliosque qui curam animarum habent, pro suprema Nostra auctoritate et omnium animarum cura, admonemus, ne circa gravissimam hanc Dei legem fideles sibi commissos errare sinant et multo magis, ut ipsi se ab huiusmodi falsis opinionibus immunes custodiant, neve in iis ullo modo conniveant. Si quis vero Confessarius aut animarum Pastor, quod Deus avertat, fideles sibi creditos aut in hos errores ipsemet induxerit, aut saltem sive approbando, sive dolose tacendo in iis comfirmarit, sciat se Supremo Judici Deo de muneris proditione severam redditurum esse rationem, sibique dicta existimet Christi verba : Caeci sunt, ct duces caecorum : caecus autem si caeco ducatum praestet, ambo in foveam cadunt.

*S.Off.,* 16 May, 1943. *(Nouvelle Retue Rhéologique,* May, 1945.)

I.—Codex I. C. peropportune monet ne confessarius curiosis aut inutilibus quaestionibus, maxime circa VI Decalogi praeceptum, quemquam detineat, ct praesertim ne iuniores de iis quae ignorant imprudenter interroget (can. 888, §2). Porro inutiles quaestiones sunt quae supplendae poenitentis accusationi ciusdemque animi dispositionibus cognoscendis minime necessariae demonstrantur. Poenitcns enim iurc divino tenetur dumtaxat omnia et singula peccata gravia post Baptismum commissa et nondum per claves Ecclesiae directe remissa, quorum post diligentem sui discussionem conscientiam habeat, confiteri et circumstantias in confessione explicare quae speciem peccati mutent, modo tamen specificas huiusmodi malitias peccando cognoverit, ac proin contraxerit. Haec, igitur, tantum confessarius per se a poenitente sciscitari tenetur, si rationabiliter suspicatur eadem bona vel male fide in confessione praetermissa fuisse; et si quando contingat cuiusdam pocnitentis examen ex toto supplendum esse, non ultra prudentis

1 De Smet, *De Matrimonio,* §241 ; Acrtnys-Damen, *Tbeol. Moralis,* II, §895.2.

coniccturae modum, attenta poenitentis conditione, percontando, progediatur.

Omittendae igitur sunt, utpote inutiles, molestae atque hac in re periculi plenae, interrogationes de peccatis quorum nulla cadit in poenitentem positiva atque firma suspicio; item de peccatorum speciebus quas haud verisimile est ipsum contraxisse. . . .

The confessor is the judge and it is his right and duty to interrogate penitents, whenever he has just reason for supposing that the law regarding material integrity of the confession is not being observed. The authors teach that a just and well-founded suspicion may exist in a certain district owing to the prevalence there of the vice of contraception: the priest may prudently act on this teaching, as suggested in the question, or he may form an individual judgement in each case without adopting a uniform mechanical rule for all cases. This latter course seems best to us.

The parish priest may bring to the notice of his assistants the two texts quoted above, and the teaching of authors on the point. But, in our opinion, he is exceeding lais right in directing them to question all penitents: this is for the judgement of the confessor, who may please himself, and in doubtful cases should rather err on the side of reticence in putting questions, as the Holy Office directs.

### **420.—** Incompetent Confessor

*A confessorfinds that a penitent has been advised by a previous confessor that the use ofcontraceptives is lawful to prevent contracting disease. On the supposition that the method used is undeniably sinful, should he tell the penitent that the previous confessor must be denounced, in accordance with the terms ofcanon* 904?

Before everything else the confessor must decide whether the advice previously given concerned an action which was in itself wrong. As explained in Q. 416, a practice such as *lotio vaginalis* may be good in itself, because it is directly an attack on the bacillus of disease; its second and indirect effect may be bad because it defertilizes the spermatozoa together with the bacillus. On the ordinary principle of the *voluntarium indirectum,* this second bad effect may be permitted for a proportionately grave reason, which is certainly present in the above case. On the other hand, the practice may be evidently wrong in itself because it is immediately and directly and of its nature an attack on the spermatozoa, e.g. preventing the entry of semen as a means of warding off contact with the bacillus. If the confessor has any doubt in his mind as to which of these categories the action belongs, he should not, of course, make any reference to the penitent's obligations with respect to denouncing the confessor. But if the action is certainly sinful, the previous confessor's advice may be construed as the crime contemplated in the legislation of Benedict XIV.

Let us, for the sake of brevity, dismiss the subject of ignorance on the part of a confessor. *Peccat ignorans·,* "quicunque negligit habere, vel facere id, quod tenetur habere, vel facere, peccat peccato omissionis; unde propter negligentiam ignorantia eorum, quae aliquis scire tenetur, est peccatum."l

l *Summa Tbeo!.,* I-II, 76, 2.

The legislation of Benedict XIV, contained in document V at the end of the Code, is primarily concerned with the confessor who is formally guilty of one of the gravest sins possible for him to commit. But its terms cover other lapses which, if you like, are nothing more than material sin. Counsel which induces a penitent to commit sins of unchastity is technically the offence contemplated by the law. From the point of view of the confessor's own conscience it is a matter between himself and God. But from the point of view of the common good of souls, who are being grievously misled, it is a matter which calls for the intervention of ecclesiastical authority. Thus, an answer of the *Sacred Penitentiary,* 2 September, 1904,1 with regard to a confessor who misdirected a married person concerning the mahce of solitary sin, was to the effect that he was to be denounced. From the wording of this document it is clear that the confessor was ignorant, not vicious.

The case we are considering is on the border line, but it remains true that a confessor's ignorance in a matter of this kind exposes him to the procedure of canon 904. He would, no doubt, escape the severe penalties of the law, but the procedure would provide an opportunity for dispelling his ignorance.

Dr Dalpiaz in *Apollinaris,* 1955, p. 244, disagrees with the view that the confessor we are considering is to be regarded as guilty of the crime punished by canon 904. He may be correct, but the practical result is much the same in his solution: "Ultro concedimus Titium errasse et quidem ex ignorantia graviter culpabili adeo ut ipse denuntiandus sit loci Ordinario, non tamen tamquam confessarius sollicitans, sed tamquam confcssarius ineptus. . .

## 421.—Counselling a Lesser Evil

*It has been put to me by a medical man that people resolved on using dangerous contraceptives could be advised about methods which were less harmful physically. Is this ever permitted?*

Subject to many restrictions, counselling a lesser evil of the same species as an act fully determined upon is taught as probably lawful by many theologians s.v. *consilium.* In *Ephemerides Theologicae Tovanienses,* 1951, p. 615, Fr L. Bender, O.P., submitted this subject to a careful examination, studying the theological teaching before St Alphonsus and questioning the reliability of some manualists whose conclusions were based on the use of second-hand quotations. The occasion of this discussion was a statement of Dr van de Velde that the use of contraceptives could be harmonized with the moral teaching of the Church, at least to this extent, that if people were determined to prevent conception they could be advised to adopt those methods which were accompanied by less physical harm. It is a point of view which is not uncommon in the medical profession, and, if it is to be accepted, would probably be a grave menace, and would largely nullify the insistent directions of the Church on this unsavoury subject.

No Catholic theologian, wc believe, has ever applied the theory to this case, and Fr Bender's theological opponents do not, of course, apply it. His examination of the classical authors led him to the conclusion that there was no greater external probability for the opinion favouring the lawfulness of

1 De Smet, *De Absolutione Complicis et Sollicitatione,* §205.

counselling a lesser evil than for the opinion which condemned it; and from an examination of the internal arguments the conclusion was reached that they lacked validity. In the same journal, 1953, p. 618, Fr J. Cacciatore, C.SS.R., contested some of the statements as being too rigid: " ... si inspiciamus valorem argumentorum utriusque sententiae, absque difficultate constabit affirmativam sententiam longe prae opposita probabiliorem esse. . . . Habenda est enim ratio formalitatis peculiaris, in quam consilium tendit, quaeque ipsum specificat. Porro formalitatcm illam esse in genere boni nullatenus negari potest. . . ." Fr Bender conceded that though it is unlawful to counsel an evil action, as such, it may be lawful for a grave reason, and other things being equal, to recall to a person's memory that choosing a lesser evil will usually be sufficient for his purpose, and one may do this while foreseeing that such a course will be adopted. The distinction is a very fine one and lends itself to the usual reproaches of all the opponents of casuistry, but many will agree with Fr Bender that to do anything more than merely "recall to memory" is to counsel something "formalitcr malum", which is clearly forbidden. We think the correct answer to the above question is on the lines suggested by Fr Bender. The theory is discussed in *Periodica,* 1932, p. 57.

### **422.—** Safe Period

*How does one answer the objection that the use of the safe period is a method of birth control, as much as any other, and is therefore intrinsically wrong?(i)*

(i) Information on the medical details may be obtained from such works as *The Rhythm,* by Fr Leo J. Latz, or *The Laws of Life,* by Dr Halliday Sutherland. The priest is concerned only with the moral issue, and should never offer advice on the physiological aspect; indeed, as a confessor, he is forbidden to do so, in our opinion, by the direction of the Holy Office, 16 May, 1943, ad II: "Eius, igitur per se non est consilia pocnitcntibus dare quae *ad medicinam vel hygienem* spectant, atque ea omnino devitet quae mirationem moverent vel scandalum gignerent. Si quae, vero, consilia huiusmodi necessaria, etiam propter conscientiam, censeantur, eadem a perito recto, prudenti, atque morali doctrina instructo tradenda erunt, ad quem igitur poenitens remittendus est.

Itidem ne audeat confessarius, seu sponte seu rogatus, de natura vel modo actus quo vita transmittitur poenitentes docere, atque ad id nullo unquam praetextu adducatur.1"

(ii) Its justification is a necessary deduction from the Catholic ethical doctrine that the morality of an action is determined, primarily and essentially, from the object or action performed, not from the intention of the agent or from the circumstances.

"Sicut autem res naturalis habet speciem ex sua forma; ita actio habet speciem ex objecto, sicut et motus ex termino; et ideo sicut prima bonitas rei naturalis attenditur ex sua forma, quae dat speciem ei; ita et prima bonitas actus moralis attenditur ex objecto convenienti, unde et a quibusdam vocatur *bonum ex genere,* ... Sic igitur in actione humana quadruplex bonitas

1 N.R.T., May, 1945, p. 220.

considerari potest. Una quidem secundum genus, prout scilicet est actio» quia quantum habet de actione, et entitate, tantum habet de bonitate; alia vero secundum speciem, quae accipitur secundum objectum conveniens; tertia secundum circumstantias, quasi secundum accidentia quaedam; quarta autem secundam finem, quasi secundum habitudinem ad bonitatis causam."[1] The use of marriage at a time when conception is less likely or even impossible is objectively lawful, and has no resemblance to the employment of contraceptives. Hence in *Casti Connubii* we read: "Neque contra naturae ordinem agere ii dicendi sunt conjuges, qui jure suo recta et naturali ratione utuntur, etsi ob naturales sive temporis sive quorundam defectuum causas nova inde vita oriri non possit." Though some refer this statement to the married intercourse of sterile people, it seems that the papal teaching is capable of adaptation to the use of the sterile period, as previously taught by the *Sacred Penitentiary*, 16 June, 1880.

(iii) But though lawful from its object, it may be sinful from the agent's intention, in the case of persons who have no just reason for restricting marital intercourse to these times. It may be sinful also from the circumstances, when the rights of the other party, for example, arc violated by this restriction, or when there is danger of incontinence thereby.

"Praxis ergo copulam solo tempore ageneseos exercendi, etsi de se non sit illicita, est tamen male sonans, quae exigit rationem cohonestantem. . . . Hinc talis praxis non est publice proponenda, nec etiam privatim positive suadenda, quia id natum est generare scandalum, imo ducere ad onanismum. Sed quandoque potest confcssarius caute illam suggerere."[2]

If it is asked whether the wrongness arising from intention or circumstances is a grave sin, no certain answer can be given: ". . . . omnis quaestio in qua de peccato mortali quaeritur, nisi expresse veritas habeatur, periculose determinatur. . . . Praecipue autem periculosum est ubi veritas ambigua est."[3]

### 423.—Safe Period Propaganda

*What is to be said about the publicity given, in certain quarters, to the Ogino-Knaus computation of the infertile period? It appears to be agreed that it is objectively lawful, but is it not capable of grave abuse?*

Books popularizing the safe period continue to appear in great numbers in various countries. Apart from one or two writers, there is substantial agreement that the use of marriage, restricted to the safe period, is not wrong objectively. There is some slight difference of theoretical opinion whether it is to be called "unlawful *perse* lawful *per accidens",* or "lawful *per se* unlawful *per accidens".** But, provided all the conditions for its use are verified, there can be no question that the practice can be without sin. The kind of circumstance rendering it unlawful would be, for example, a bad intention in limiting conception for no proportionate reason, the danger of incontinence during the fertile period, or the injustice of refusing to render the debt to a partner who is reasonably seeking it.

[1] *Summa Tbeol.,* I–II» 18, 2 and 4.
* Mcrkclbach, *Tbeol. Moralis,* III, p. 929.
• St Thomas, *Quodlibet.* IX, art 15.
[1] *Theological S/udies,* 1947, p. 104.

Every theologian writing on the subject is careful to note the limitations to the lawful use of the safe period. But the problem is how to prevent this unlawful use. It has always seemed to us that the popular propaganda of this "new learning" on the part of Catholic writers and publishers cannot easily be defended. For it is admitted by all that the knowledge can be an occasion of sin—*scandalum pusillorum.* So far, in this country, we have escaped the elucidation of the matter in the popular Catholic press. In other countries the same reticence does not exist, and the subject is pressed upon the Catholic public in a somewhat startling fashion.

It may be said that all knowledge is desirable, and that there arc many Catholics, deserving the utmost sympathy, for whom the discovery would be providential. That is true, but their eases are amply met by confessors being aware of the new theories, and by medical men explaining the necessary details, when advisable, in their consulting rooms. It is really only one aspect, or application, of the accepted rule which restricts, as far as is possible, the circulation of works dealing with sexual intercourse to those who are competent to use them without danger to morals. The present time is singularly unsuitable for a kind of crusade by Catholic pubheists favouring a method for restricting conception.

No doubt there is something to be said for propagating the new computations, since the pamphlets and popular explanations appear with an episcopal *imprimatur.* But the writers of standing and repute who are absolutely opposed to public propaganda are very many, and it may be worth quoting some of them.

Mcrkelbach, O.P.: "Hinc talis praxis non est publice proponenda, nec etiam privatim positive suadenda, quia id natum est generare scandalum, imo ducere ad onanismum."[1]

Salsmans, S.J.: "Deplorare non satis possumus rem adeo difficilem ct salebrosam fuisse in vulgus promulgatam";[2] "La publication en Hollande de la brochure du Dr Smuldcrs, faite d'ailleurs avec de bonnes intentions, est souverainement deplorable."[3] He concludes against the lawfulness of promulgating and broadcasting the new information, particularly by the clergy, who should always show themselves opposed to the use of the sterile period, as a general rule, unless in a particular instance strong reasons are present to justify it.

Dr Louis Nau[4] teaches practically the same doctrine. "All prominent Catholic moralists vehemently condemn the broadcasting and general dissemination of the practice. ... To establish the sterile period demands the advice of experts. A priest assuming to give such practical advice is trespassing on a field that docs not belong to him. Venturing upon such an intimate personal discussion ill becomes an ambassador of Christ. It is derogatory to the dignity of the priesthood. Failure in the outcome will destroy the confidence of penitents so much needed for the exercise of the sacred ministry. A priest consulted will answer the moral difficulty, but for the *régime* to be followed he will remit the party to a reputable and competent physician. A confessor has no right to brand the practice of 'Rhythm' as sinful, but, if he is true to his duties, he will follow the instruction of the

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[1] *Theol. Moralis,* III, p. 937, ed. 1936.
[2] *E.T.L.,* 1934, P· 168·
[3] 5. *Lite Médical,* 1933, p. 527.
[4] *The Acolyte,* 18 August, 1933.

*Sacred Penitentiary* (caute insinuari) and advise the practice only in particular cases where there are serious reasons such as sickness, poverty, very difficult childbirth caused by malformations, and other like physiological or psychological reasons."

Dr Guchtencerc: "Mais nous devons à la vérité de dire—malgré tout l'estime que nous avons pour le caractère et les intentions du confrère Smuldcrs—que nous sommes de ceux qui pensent qu'une étude aussi détaillée devrait être réservée à des revues médicales, et qu'il ne semble pas opportune de jeter dans le grand public des notions nouvelles dont il peut être un usage inconsidéré sinon franchement abusif."[1]

Vermecrsch, S.J.: "Cum obstinatis onanistis poterit, ut respondit S. Poenitcntiaria, cautc et prudenter insinuari istud minus malum, nulla ratione istud commendando, sed quasi invitus permittendo. *Cante et prudenter."*[2]

*Irish Ecclesiastical Record:* "We hope and believe it is true that the married couples who have a sufficient justifying cause for availing of the Ogino-Knaus system arc comparatively few. That in itself should be ample reason why the knowledge of this system should not be spread indiscriminately. For it is unfortunately only too easy for people to persuade themselves that the medical or social or eugenic indications of which we have spoken are verified in their case. Accordingly, we find the moralists who have written on the subject practically unanimous in urging that instruction on these matters should be as far as possible individual."[3]

The moralists are practically unanimous about it, and the only explicit instruction of the Holy See[4]*merely directs that the safe period doctrine may be communicated cautiously to those who cannot otherwise be refrained from Onanism. The teaching of *Casti Connubii* is not an approbation of periodical continence, though it is capable of being used in this sense.[6]

If any further pronouncement on the subject is made by the Holy See, which is not unlikely,[6] it will surely be in accordance with the decision of 1880, and will deprecate public propaganda and instruction, in conformity with the established attitude of the Church on sexual instruction in general. Without some official pronouncement, it will be difficult to restrain the legitimate business instincts of Catholic publishers. One of the first, if not the first, little book on the subject circulating in this country was *The Sterile Period in Family Life,* by Canon Coucke and Dr Walsh, complete with calendars of the menstrual cycles.[7] The canon, who is the professor of moral theology at Bruges, is opposed to public propaganda on the subject. His articles appeared first in a clerical review and were afterwards published, in

[1] 5. *Luc Médical* 1931, p. 90.

[2] * *Periodica,* 1934, p, 247·.

[3] ' »9Î4. XU11, d. 417.

[4] 5. *Poenit.,* June, 1880. This reply is said to have been confirmed by the *Sacred Penitentiary,* 20 July, 1952; cf. Acrtnys-Damcn, *'Vbeol. Moralis* (1947), II, §897, n. 4·

[4] C.T.S. tr., p. 28. One recent writer, whilst making as strong a case as possible for the lawfulness of the safe period, admits with regard to this passage: "On aurait tort cependant de voir dans ces paroles une approbation voilée, mais directe de la continence périodique. Ceux qui ont des accointances avec le Vatican nous certifient qu'il n'en est rien." Uorsaz, *Contrôle Rationnel des Naissances,* p. 180. Sec Q. 422 (ii) for the papal text.

[4] Cf. *Collât. Brugen.,* 1934, p. 472, n. (2).

[7] Wagner, New York, 1932.

the form of a brochure, without the author's knowledge. He has protested against this procedure.[*]

Nor is this objection to publicity confined to theologians. It is viewed with the gravest concern by some Catholic doctors, and instinctively resented by the mass of good Catholic parents. The reaction of the faithful in general to questions of this kind is a surer guide than the reflections of theologians. The voice of the faithful is, indeed, too often inarticulate, but the following pronouncement does seem to us to represent the feelings of the average Christian mother on being confronted with the public discussion of menstrual periods and conceptional calendars. It is a protest from the Women's Organizations in the Diocese of Munster, and is addressed to the German bishops. We have not got the original and give a French version as printed in *Collectanea Mecblinicnsia,* 1955, p. 648: "Dans ce dernier temps de nombreux milieux s'occupent de la question de la continence périodique dans le mariage, en vue de la limitation permise de la natalité. Avec importunité on fait de la réclame pour un calendrier conceptionnel. En chaire et par des tracts distribués à profusion aux portes des églises, on a recommandés en divers endroits la méthode Smuldcrs. L'encyclique sur le mariage chrétien, elle-même, et des extraits d'écrivains Catholiques séparés du contexte sont utilisés pour faire des affaires avec ces calendriers et ces brochures. En nôtre qualité de femmes catholiques nous élevons une vive protestation contre cette manière indigne de traiter les questions matrimoniales les plus difficiles et les plus délicates. Nous demandons respectueusement aux Ordinaires de faire tout pour arrêter le plus possible la discussion publique de cette question encore complètement obscure biologiquement et médicalement et son abus commerciale, et d'attirer l'attention du clergé sur les grands dangers de cette propagande pour le mariage Chrétien et la dignité de la femme."

It might be said, with Dr Ryan in the *Ecclesiastical Review*[2] that there is already so much publicity that it is idle to discuss ways and means of keeping the publicity at a minimum. But we arc not so sure that it is idle to refrain from joining in a cause of scandal. There are some Catholic writers who feel that, in all the circumstances of the present time, the greatest publicity should be given to the safe period, and one bishop has explained the doctrine to the faithful of his diocese.[3] The Bishop does not, indeed, expressly weigh the arguments for and against publicity and decide in its favour, but a favourable view is implied.

In marked contrast to this view is the prohibition contained in n. 47 of the Vth Provincial Council of Malines (1957): "Ob bonum sociale pastores animarum aliique catholici viri a tali methodo habitualiter sequenda, data occasione, populum Christianum avertant. Reprobandi sunt editores, scriptores et venditores librorum vel diariorum qui ex professo istum usum in vulgus spargunt ac promovent."

Weighing all the arguments, we find ourselves convinced that the fathers of the Malines Council are right.

[*] *CoHat. Bragin.,* 1937, p. 85.

[2] 12 July, 1933, p. 39.

[3] Rt. Rev. Franz von Strong, Bishop of Solothurn. English tr. *.Marriage a Great Sacrament.*

## §7. JUSTICE

### 424.—Defamation

*A young man is convicted of a sexual offence and put on probation by the bench. The affair is hushed up and does not appear in the newspapers. Some people, nevertheless' spread their knowledge of the man's character in the district' and it appears that they are justified since a public condemnation carries nith it necessarily public defamation of character. On the other hand, the man suffers unnecessarily by their ill-considered action. Was the defamation justifiable?*

There is clearly no detraction in speaking of another's crime which is already publicly known. The man's good name, to which he has a right in justice, has been lost and he cannot be deprived of something which he no longer possesses. No sin against justice is committed by divulging it. In the circumstances of the present case there is *notorietas juris,* arising from a judicial act, but little or no *notorietas facti* owing to the suppression of publicity. We think that *notorietas juris* suffices in order to excuse one from a sin against commutative justice, in speaking of the crime which has been condemned. From the nature of the act, and from its social value to the community, a judicial sentence is liable normally to be "notorious" in both senses of the term.

But the delinquent is reasonably unwilling that knowledge of his crime should be spread through the whole country by newspapers. Unless the knowledge can be reckoned of utility to the community, it is a sin against charity to spread it abroad. Similarly, with regard to individuals who speak about it unnecessarily; unless the knowledge is judged useful in preventing harm to some other persons, or in warning them about the man's character, it is a sin against charity to speak about it to others. "Videtur esse peccatum contra caritatem, quando in ephemeridibus publicantur sine sufficienti ratione sententiae condemnatoriae valde infamantes latae contra illum delinquentem, qui nec proximo nec reipublicae amplius nocumentum afferet."[1]

### 425.—Self-Defamation

*It would appear that certain fairly common practices violate the right of the penitent to secret confession' a right so strong that be is not bound to declare his mortal sins, even in the hour of death, if he cannot confess them secretly.* 1. *Priests on their pastoral rounds often ask the people publicly in their houses if they have been to Mass on Sundays.* 2. *They ask them, also, if they are going to make their Easter duties.* 5. *Teachers in schools order the children who have not been to Mass to stand up.* 4. *Religious who are preparing children for their first confession make them rehearse what they are going to confess.* 5. *Does a man tell a lie who, having missed Mass, declares that be bas been, when he is publicly questioned by tbe priest?*

The right of secret confession and the various questions arising from it

[1] Prummer, *Tbtol. Morali/,* II, §194.

arc not, strictly speaking, touched by these queries, with the exception, perhaps, of n. 4. For the admission of guilt must have some relation to the act of confession. A priest, for example, who approached the people gathered outside his confessional and proceeded to question them publicly about their sins would, indeed, grossly contravene the law. The first two cases, properly speaking, must be discussed from the angle of the priest's rights and obligations, not as a confessor in the internal forum, but as a pastor with care of souls in the external forum. The cases 3 and 4, similarly, must be discussed from the angle of the obligations affecting those who stand "in loco parentis". It is evident that grave objections can be brought against most of these practices, but the hardest thing one could say would be to accuse priest, teacher or nun of very serious indiscretion in the performance of their duties. They could not, I think, rightly be accused of compelling penitents to confess their sins in public.

*Cases* i *and z.* Λ priest with care of souls is bound, amongst other things, to urge the people to keep the laws of the Church regarding Sunday Mass and Easter Communion. "Ideoque non satis est verbum vitae, et ad pietatem incitamenta, eis tantum qui ad nos ultra accedant offerre; sed oves praesertim perditas, et eos qui a pietate deficientes in vitiorum barathrum apsi et demersi sunt, nec vocem pastoris audire volunt, exquirere et in quantum possumus ad Deum reducere tenemur."[1]

Hence, canon 470, §1 speaks of the "liber status animarum" which each parish should possess, the nature of which is more clearly determined by the Westminster decree just cited: "Conficiatur . . . populi census accuratus, in quo inscribantur numerus et familiarum et singulorum eorumdem membrorum, tum parvulorum, tum adultorum nomina, additis etiam omnibus adjunctis quae ad fidem, ad mores, ad pietatem, et praesertim ad parvulorum educationem spectant."

In carrying out this duty of "fraternal correction", during the visitation of his people, the priest must act guardedly and cautiously.[2] He needs the greatest prudence and discretion, having in mind the circumstances, education and habits of his flock. Therefore, as a general rule, this pastoral discretion demands that he should not question individuals publicly concerning Mass and Easter duties. One reason is that they have a right to their good name; the particulars of the "liber status animarum" must be most carefully guarded.[3] Λ further reason is that public questioning would commonly have the opposite effect to that intended. While admitting all this, it does not at all follow that the practice is always and everywhere wrong. Supposing, for example, that a priest is visiting a family of strong Catholic traditions, in a part of a country where a periodical census is not only tolerated but welcomed, and where the priest visits the people in order to talk serious business. The shortcomings of one of the sons may be common property in the family. It may not be possible to speak to him privately, and it could not be regarded as an indiscretion if the priest were to ask him, before his brothers and sisters, when he was at Mass last, or if he had made his Easter duties. On the other hand, it would always be a serious indiscretion for a priest to question parents in this way before their children.[4]

[1] IV *Westm.,* x, 8.
[1] Cf. *Irish Ecclesiastical Record,* 1927, XXIX, pp. jii and jij.
[*] Fanfani, *De Jure Parochorum,* §73.
[4] Canon Dunford, *Practical Suggestionsfor the Newly Ordained,* p. 84.

*Case* 3. Teachers in Catholic schools stand "in loco parentis" and the tendency, a bad one, is for the parents to leave every detail of the religious education of their children entirely in the hands of the teachers. If it is to be held that the teachers have no right to question the children concerning their attendance at Mass, we should have to hold that the parents also have no right to question them, which would be absurd. The trouble arises when the questioning is done publicly, for the same objections occur as in the cases just mentioned. The practice is open to abuse, especially if all the children who missed Mass arc punished automatically without any inquiry as to their reason for being absent. On the other hand, it is hard to sec how the inquiry can be done privately in a school of two or three hundred children. The alternative is to have no inquiry at all, with the result that the children of indifferent parents will habitually miss Klass. My solution is that the inquiry should be in private if it is practical but, if it is impossible in a large school, then the disadvantages of the practice must be tolerated for the common good. Cf. Q. 96.

*Case* 4. In these days children commonly make their first confession round about the age of seven. The importance, as well as the difficulty, of preparing them is appreciated by all. Amongst other things, the teacher has to suggest to their minds a certain number of little sins which children at that age are likely to commit; e.g. disobedience, lying, quarrelling. One is not disposed to object to the practice of training the children to recite a certain general formula of accusation; it prevents nervousness and mental confusion, and a more intimate admission of their childish frailties can be obtained by the priest himself. I think that, in the circumstances of the first confession of small children, there is no danger of this tutorial practice becoming a serious demand, on the teacher's part, for a real personal confession of guilt.

*Case* 5. On some of the modern theories which explain the malice of lying, I suppose it would be possible to excuse the man from the guilt of lying on the supposition that the mode of the question (public inquiry) is reckoned to be unjustifiable, as leading to self-defamation. On the traditional and classical explanation of a lie as "locutio contra mentem", the only explanation which preserves the notion of veracity as a distinct species of virtue, the man told a lie. He should have replied that he objected to discussing the affairs of his conscience in public, a rebuke which would in many cases be well merited.

## 426.—Title by Accession

*Is "accession", owing to the nature of money as merely a medium of exchange, a valid title to its ownership, apart from the civil law? If so, how explain the silence of theologians on the point? Is "accession" a valid title to ownership render English law?*

Accession is a title whereby the owner of the principal object, or of the mass, becomes the owner of the accessory increment, subject to compensation *pro rata* which may be due to the owner of the increment. We have not found that writers usually discuss the possession of money on this principle, though there is no reason why they should not do so, as in *Irish*

*Ecclesiastical Record,* 1918, XI, pp. 325-7. The reason, no doubt, is that a just title to the increment, with no obligation to compensate *pro rata* the owner thereof, depends on considerations other than the fact of accession. If, for example, I unjustly acquire a pint of oil and pour it into a large vat of the same kind of oil which is my own, restitution is due to the owner of the pint, notwithstanding the fact that it has become indistinguishably merged into my own property: I must draw off a pint or pay the equivalent. Similarly, if I unjustly acquire a £*i* note and mix it with my own money, I must repay £*i,* and it is irrelevant whether the note repaid is identical with the one unjustly acquired. In all such questions, it is not the fact of accession but my just title to the increment which has to be established, and this is more logically and conveniently discussed by the theologians under the heading of possession in good, bad, or doubtful faith, an inquiry which yields a large number of problems, on the solution of which there is sometimes agreement and sometimes not.

The fringes of the natural law on this and kindred matters are often blurred, and questions have to be solved on the principle that the civil law determining the ownership of property binds in conscience unless it is manifestly against the natural law. Thus, in our law, "if current coin of the realm be paid over for valuable consideration to an innocent party, his title thereto will be complete; although it should have been wrongfully obtained by the party who made the payment".[1] The same applies to the transfer of any negotiable instrument, the real test of negotiability being "the capability of conferring on a *bona fide* holder a better title than that of his transferor".[2]

Is there a valid title to ownership in such cases apart from the civil law? There certainly is where the holder in good faith has taken the money or the negotiable instrument in exchange for equivalent value given, without suspecting any defect of title in the transferor. Other cases may be arguable on a principle of natural justice, and we cannot here elucidate so vast a subject. Our immediate concern, in answering the above interesting question, is merely to show that a correct solution, or in doubtful issues a probable solution, is to be sought not in the principle of accession but in that of possession in good, bad, or doubtful faith.

## 427.—Occult Compensation

£11.

*I have heard it maintained that it is lawful for a worker who is not receiving a just wage to exact occult compensation if he otherwise would be faced with:* (1) *being the cause of a strike in the industry if his trade union took up the matter with the employer;* (2) d *lesser living wage in the unemployment dole. Surely between wage-earner and employer there is, at least, an implicit contract which excludes the notion of occult compensation ?*

Innocent XI, *Propositio Damnata,* η. 37: Famuli et famulae domesticae possunt occulte heris suis surripere ad compensandam operam suam, quam maiorem iudicant salario, quod recipiunt.

[1] Stephens, *Commtn/arifs,* II, iv, ad fincm,
[*] Susman, *Contrat//,* p. 98.

I know of no authority who would sanction occult compensation in the circumstances narrated above. The employee is "of the opinion", but the first condition required in this matter is "certainty" concerning a debt of justice, that is to say, the injustice must be manifest. I imagine that the employee who is not of the opinion that he is receiving insufficient salary docs not exist. The intention of applying the principle of occult compensation in order to avert a strike is a good one; but we may not do evil that good may come, and it is necessary to determine the lawfulness of what is proposed without reference to its motive. The evil of having to live on the dole also is not strictly relevant to the matter under discussion. The proper course in this case is for the employee to air and, if possible, remedy his grievance by every lawful means, even though it should ultimately lead to a strike in his industry.

The manualists all hesitate to sanction occult compensation, in principle, as a remedy for an unjust wage because the conditions are not usually verified, namely, that the money is due in strict justice, that the debt is certain, that there is no other remedy, and that there will be no injury to a third party.1

Nevertheless, though denying its application as a general principle, it is admitted by all that it is possible for the conditions to be present in a rare and exceptional case. It is permitted, for example, when the employer withholds the salary agreed upon. It is also permitted, other things being equal, in the case where the employee has been forced by necessity to agree to a manifestly unjust salary. Very likely it is a rare case of this kind which our correspondent has heard defended. It would be necessary to know far more about all the circumstances before being able to say, with any assurance, that the view is right or wrong. With regard to the condemned proposition, it is agreed that it applies not only to domestic servants but to all in a similar wage-earning position. But it is also agreed that the proposition is condemned because its terms are far too vague and general, and not because it is intrinsically inconceivable that a domestic servant should ever be in a position to apply the doctrine of occult compensation.

### 428.—Grave Matter in Theft

irZw/ *is to be considered absolute grave matter at the present time in thefts committed by religiousfrom the goods ofthe institute?*

Unlike the accepted standard for relatively grave matter, namely the sum sufficient for a day's support, no perfectly satisfactory standard has been discovered for measuring the gravity of matter on an absolute basis. The most successful attempt at a definition is that by Arendt in *Nouvelle Revue Théologique,* 1926, LUI, p. 125, which is beginning to find a place in the current manuals. By comparing the sum laid down by moral theologians at various times during the last couple of centuries with the value of money in each district, he has shown that absolute grave matter is the weekly wage of the unskilled worker of the more favoured kind. This is a coincidence radier than a principle, but it does provide a measure of gravity which can

1 E.g. Acrtnys, *Tbtol. Moralis,* I, §732; Noldin, II, §428; Priimmcr, II, §90.

easily be applied in any country and at any time, and in days when the value or money is constantly changing it seems to us to offer a reasonable basis of computation. It will not be, indeed, mathematically exact, but the sum suggested by theologians is even less exact and constant, varying between 100 and 400 francs in 1926. Fr Davis accepted *fy,* as grave matter in 1946.[1] The cost of living and the rate of wages have increased since then, and wc should think at the moment of writing, June 1948, that *£y* may safely be regarded as grave matter.

Having determined the amount, one may then increase it in different circumstances, following the teaching of the authors which has been commonly accepted. Thus, twice as much may be estimated as the minimum for grave matter in the case of thefts on the part of children stealing from their parents in families which are not in dire poverty. On the part of subjects of a religious institute stealing its property, some of the older writers cited by St Alphonsus, IV, 24, applied the same principle. Modern writers hesitate to permit as much as double the amount, since the circumstances are very different. They do concede, however, that one may estimate a larger amount than in the case of non-members of the institute stealing its goods, and the opinion of Vermcersch may safely be followed, which permits an increase of fifty per cent.[2]

### 429.—Railway Frauds

*Is any sin of injustice involving the obligation of restitution committed in the following cases:*

*X in London wishes to go to Dublin and his brother Y in Dublin wishes to come to London. There is a cheap excursion to Dublin and back to London. Though the tickets are marked "not transferable" X uses one half to go to Dublin and gives his brother Y the other half with which to come to London. They are of the opinion that since the railway carries one person in each direction no injustice is committed.*

*A certain master in a school buys all the tickets for his pupils when they are returning home for the holidays. Many of the parents send sufficient money for half-tickets only, although their children are well over the age stipulated for half-tickets. Is the master in getting the tickets, according to the money sent, guilty of co-operation in injustice and bound to restitution? Some maintain that the law in the matter is only penal and that one is bound to restitution only if found out; that if the officials let the boys through, they connive at the practice, etc. Is it not rather a question of the non-fulfilment of an essential condition of a contract?*

Certain considerations are sometimes advanced which argue that there is no strict violation of commutative justice in these and kindred practices. It is said, for example, that the railways suffer no loss, since they are bound to carry one person on the return journey, and it can make no difference who this person is; that the law is merely a penal one carrying no obligation in conscience at least *ante sententiam judicis.* There seems no weight in such considerations. There is decidedly loss to the railways, not indeed in the cost of running the actual train on which a person makes the return

[1] *Moral Theology* (1946), II, p. 302.
[2] *Tbtol. Moralis,* II, §642.

journey, but in the breach of contract caused by that action. The railway allows a reduction, quite fairly and reasonably, only in favour of the person who is proposing to make the double journey himself; it is one of the express conditions of the contract that the ticket is "not transferable". An unjust loss is inflicted by not observing this condition, and restitution is due.

The same must, in our view, be said in the ease of what amounts to a false declaration of age, in order to travel at half-fare. But this point is not quite so evident as the former one, because it is open to the officials to challenge the holder of a half-ticket as to age, and it could possibly be argued that breaches of the law are tolerated by the officials.

With regard to the purely penal nature of the regulations in each of these eases, we think that there is little room for such a view in the first instance. In the common estimation, a person convicted of railway frauds is reckoned to have done something dishonourable because unjust; there is a certain moral reproach about it which does not accompany breaches of purely penal laws such as selling tobacco after the legal hour. The same conclusion is reached, though less evidently, in the case of wrongfully travelling with a half-ticket. But if a person is in conscience persuaded that the officials issuing the ticket knew, or could easily discover, the actual age of the child, one could conclude that there was no clear violation of commutative justice, and therefore no restitution due.

In this country, I think, good and honest men do not avoid payment of the legal fare on public vehicles; the law is well known and its violation is not sanctioned by the public conscience. There may be English writers who, recording mechanically the opinions of foreign theologians, concede "probability" to such practices, but I cannot find their judgements on this subject. It is a small point which could be dealt with under various headings and is difficult to locate. A writer in the *Irish Ecclesiastical Record,* November 1910, p. 495, who goes fully into the matter, gives an opinion which is identical with mine. Slater, *De Justitia et Jure,* p. 69, appears to agree, in principle, though the point is not fully argued: "Unde patet quid dicendum de co qui iter faciat via ferrea quin pretium solvat, societate invita."

Supposing, for the sake of pursuing the point raised, that buying a half-ticket for a child over the age is unjust, the position of the master is that of *exeqnens* in relation to the parent who is *mandans.* He co-operates effectively in the injustice and does wrong, but the obligation of restitution, if any is on him only in the second instance, namely, on the supposition that the parent fails to make restitution.

In the confessional a confessor will impose the obligation of restitution or not according to circumstances. I can imagine myself not insisting on restitution in cases of this kind for a variety of reasons, but amongst them would not be that the action in question is not a matter of commutative justice.

### **430.**—Restitution for Petty Thefts

***If** the theft of light matter is confessed, must the penitent, in order to get absolution, promise restitution?*

A willingness to make restitution must always accompany sorrow for theft committed, because retaining ill-gotten goods is, so to speak, a con-

tinual theft: . prcccptum de restitutione facienda quamvis secundum formam sit affirmativum, implicat tamen in se negativum prcccptum, quo prohibemur rem alterius detinere".[1] Wc describe the obligation as the "willingness" to make restitution—what the books call restitution "in voto" —since there may exist just reasons excusing restitution for the time being.

If, however, the theft is of small matter, the sin is venial and the obligation of making restitution is also light. Since there is no strict obligation to confess venial sin at all, the erroneous view is sometimes held that there is no obligation of restitution when the theft is of light matter. It is correct that there is no obligation to confess the sin, but it is incorrect to suppose that a penitent can, at one and the same time, profess sorrow for a venial theft whilst declining restitution "in voto". If he is resolved not to make restitution the sin should not be confessed, for it is useless to confess a sin, even a venial sin, without sorrow. Usually the confessor need not be unduly insistent in requiring a promise of restitution, particularly for very small thefts, but it may occasionally be necessary for preventing a false conscience on the matter, especially in the ease of children.

This is the common doctrine and we know of no writer who teaches the opposite. What the manualists do maintain, quite properly, is that one may frequently and more easily find reasons excusing from restitution when the theft is small, but in principle the obligation is always there: restitution in grave matter *sub gravi,* in light matter *sub levi.*

## 431.—Restitution to the Poor

*Is it a strict obligation in justice, not merely a counsel, to make restitution of ill-gotten goods to the poor whenever the rightful owner cannot be traced?*

(i) It is certain that, in such cases, restitution must be made to the poor, and the only point in dispute is the rather academic question from what title or principle this obligation arises, namely whether it is derived from the natural law or merely from the positive law of the Church. Aertnys, *Tbeol. Moralis,* I, §798.3, whilst accepting the obligation on the part of an unjust possessor in bad faith, hesitates to apply the doctrine, except as a counsel ("maxime convenit") to the unjust damnificator who is himself no richer by the injury he has caused. This aspect docs not actually come within the above question; moreover, *teste* Prümmcr, *Theol. Moralis,* II, §254, n. 97, Aertnys is alone in holding this view.

(ii) The view which traces the obligation merely to the positive law was held by Lcssius and Molina amongst the classical writers, and it was based partly on a text of the decretals dealing with usurers, partly on the practice of the Holy See in condoning restitution due to the poor. Seeing that there is no trace whatever of this law in the Code, it is the opinion of all the modern writers wc have consulted that the view of Lcssius and Molina, whatever may have been its value in their time, can no longer be held. Probably the best examination of the whole subject is that given by Fr Bouscaren, S.J., in *Periodica,* 1927, xvi, p. 41 *seq.*

The practice of the Church in "compounding" the obligation is explained

[1] *Sunmia Tbeol.,* II–II, 72, 8, ad 1.

on the principle that the Holy Sec represents the poor, to whom restitution is due on natural justice, and for adequate reasons affecting the good of souls elects to condone in part what is due. The composition thus effected is an important feature in the Spanish "Bulla Cruciata", and in other places is arranged through the *Sacred Penitentiary.*

(iii) It is of the natural law that ill-gotten goods should be given to the poor when the rightful owner is unknown, firstly because the stability of social life demands that none should be better off from an act of injustice; the property unjustly acquired must be given up. Secondly, it must go to the poor because this is presumed, in the circumstances, to be the will of the rightful owner.

Noldin, *Theol. Moralis,* II, §503, observes that a confessor may often prudently abstain from bringing this obligation to the notice of a penitent. This is true, but it is no more than a particular application of the general principle of leaving people in good faith, whenever the appropriate conditions arc deemed to be present.

## 432.— Animals' Rights

*It is frequently stated that the Holy Offce has affirmed that animals have rights. Couldyou give the exact text?*

We can find nothing on the subject in the usual collections of papal documents; the teaching of Catholic theologians, e.g. Priimmcr, *Theol. Moralis,* II, §14, gives a negative reply to the question.

In *Animal Welfare,* by Dom Ambrose Agius, O.S.B.,[1] we read the following: "We have insisted that animals, not being moral persons, have no personal rights against their masters. Yet they have rights 'ratione Creatoris', that is they cannot be maltreated without infringement of the rights of their creator, and 'ratione ordinis creatae', that is without dislocating God's order in nature. So the Holy Office, whose answers are of course authoritative, replied to Mr. Weld-BlundcH's interrogation as follows: 'Have animals rights *of any kind* as against their masters or owners? Yes'."

The notion of "rights", as restricted to rational creatures, is difficult enough to define, and it would appear better not to use the word at all in relation to animals, since it always implies something personal to the subject possessing it. If used, its sense is purely metaphorical, in much the same way as St Thomas speaks of men having friendship with animals: "creaturae autem irrationales non possunt communicationem habere in vita humana, quae est secundum rationem; unde nulla amicitia potest haberi ad creaturas irrationales, nisi forte secundum metaphoram . . . possunt tamen ex charitatc diligi creaturae irrationales, sicut bona quae aliis volumus, inquantum scilicet ex charitatc volumus eas conservari ad honorem Dei, et utilitatem hominum: et sic etiam cx charitatc Deus eas diligit".[2]

It would be interesting to have the original text of the private reply given by the Holy Office, in order to weigh the meaning of the words "of any kind", but we have not been able to discover it.

[1] C.T.S., S. 157, p. ij.
[2] *Sumwa Tbtol.,* П-П, 25, 3.

# II. LAWS OF THE CHURCH

## §i. PRINCIPLES

### 433.— Interpretation of Laws

*A synodal law under the title "De Locis Sacris", sub-title "De Sacris Aedificiis", enacts that all "bona ecclesiastica immobilia" are subject to the previous provisions concerning churches. "Loca Sacra", as defined in canon* 1154 *of the Code, do not include such property as schools and presbyteries. Could it therefore be held that these latter are not included in "bona ecclesiastica immobilia" of the synodal law?*

Canon 18: Leges ecclesiasticae intclligendae sunt secundum propriam verborum significationem, in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos Codicis parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum.

On all the ordinary rules of interpretation, enumerated in the canon, the meaning of this law is clear, or it can be made clear by the simple method of recourse to the legislator. All immovable ecclesiastical property, such as schools and presbyteries, are subject to the laws enacted for churches. The only doubt, if it can be called a doubt, arises from its position under the title or rubric *De Locis Sacris.* The title is an authentic part of a document containing laws. It is not itself a law but may provide a means of rightly interpreting the law. Maroto gives an example: *eligantur* in canon 599 or *electiones* in canon 1452 do not signify the same as *electio* in canon 160 *seq.',* the difference of meaning in each case may be perceived from their respective rubrics or titles.1

Our questioner quotes the *regula iuris* "A rubro ad nigrum valet illatio". The complete rule, and quoted as such by Cicognani2 and Cappello,3 continues "dummodo rubrum non contradicat nigro". Van Hove commenting on the rule says: "Attamen per nigrum derogari potest rubro, adeo ut significatio rubricae sit interdum determinanda iuxta nigrum; saepius tamen nigrum est determinandum iuxta rubrum."4 Therefore there is no serious difficulty from the context and title of this law; it is one of the cases where *rubrum* (the title) is to be interpreted according to the *nigrum* (the law), since the meaning of the law is perfectly clear apart from this slight technical doubt arising from its position under the title. Similar situations are found in the Code itself, as in Part II *De Religiosis,* canons 673-681, which treat of persons who arc not properly religious, according to canon 675, §1.

1 *Institutiones Juris Canonici,* n. 167.
1 *Canon Law, Commentary on Wook /*, p. 612.
3 *Summa Juris Canonici*, Vol. I, n. 85.
4 *De Legibus,* n. 25 j.

## 434.— Diocesan Law

*Inasmuch as all laws and decisions emanating from the Holy See have no binding force until three months have elapsed, could it not be said that the same rule applies to episcopal laws in those cases, at least, in which the legislator makes no decision about the date?*

The promulgation of laws made by the Holy See is governed now by canon 9: "Leges ab Apostolica Sede latae promulgantur per editionem in *Actorum ApostoHcae Sedis commentario officiali,* nisi in casibus particularibus alius promulgandi modus fuerit praescriptus; et vim suam excrunt tantum expletis tribus mensibus a die qui *Actorum* numero appositus est, nisi cx natura rei illico ligent aut in ipsa lege brevior vel longior vacatio specialiter et expresse fuerit statuta." It would be erroneous to apply this rule to "all laws and decisions", for its force is restricted to purely positive ecclesiastical laws. A decision of the Holy Office, for example, on some doctrinal point or on some moral obligation of the natural law, binds immediately it becomes known: "cx natura rei illico ligent", as is stated in the latter part of the canon. The date of reckoning, it should be noticed, is not the date of the document but of the number of the *Acta* which contains the law. This three months' *vacatio* is expressly permitted, in the case of papal laws, in order that they may be securely promulgated throughout the world.

The rule for diocesan laws is quite different. Canon 335, §2: "Leges episcopales statim a promulgatione obligare incipiunt, nisi aliud in ipsis caveatur; modus autem promulgationis ab ipsomet Episcopo determinatur." There is no period of *vacatio* unless it is expressly granted, because it is easy for everyone within the confines of a diocese to become acquainted at once with diocesan laws.1

*Have diocesan laws the same binding force in conscience as the common law in the Code? It would seem that they have not since it is often not very clear what they are.*

The binding force in conscience of a diocesan law is exactly the same as that of the common law. The only difference between them is that they bind only within the territory of the diocese, whereas the common law is in force everywhere. Canon 335, §1: "Ius ipsis (Episcopis) et officium est gubernandi diocesim tum in spiritualibus tum in temporalibus cum potestate legislativa, iudiciaria, coactiva ad normam sacrorum canonum exercenda."

Their interpretation is neither more strict nor less strict than the common law; it is exactly the same. But they need promulgation exactly as any other law, and it is chiefly under this aspect that their binding force may sometimes appear to be less than that of the common law. The most solemn form of promulgation is that which takes place in a diocesan synod, but the bishop may use any method of promulgation, as stated in the latter part of canon 335. In some dioceses they are promulgated in the official diocesan periodical; in others each law is brought to the notice of the clergy by a printed communication, and frequently the whole body of diocesan law thus promulgated is printed together in one folium.

1 *Apollinari/,* 19JO, p. 126.

## 435.—“Audito Capitulo”

*The canons frequently require certain persons to be consulted, e.g.”audito capitulo”. What is the effect on the validity and legality of actions if this clause is not observed?*

Canon 105 : Cum ius statuit Superiorem ad agendum indigere consensu vel consilio aliquarum personarum: 1. Si consensus exigatur, Superior contra earundem votum invalide agit; si consilium tantum, per verba, ex.gr.: *de consilio consultorum,* vel *audito capitulo, parocho,* etc., satis est ad valide agendum ut Superior illas personas audiat; quamvis autem nulla obligatione teneatur ad eorum votum, etsi concors, accedendi, multum tamen, si plures audiendae sint personae, concordibus earundem suffragiis deferat, nec ab eisdem, sine praevalenti ratione, suo iudicio aestimanda, discedat.

Canon 1680, §1 : Nullitas actus tunc tantum habetur, cum in eo deficiunt quae actum ipsum essentialiter constituunt, aut solemnia seu conditiones desiderantur a sacris canonibus requisitae sub poena nullitatis.

(i) The word “validity” in the above question is the point of most consequence. It is clear from the canon that, provided the consultation takes place, the law is observed even though the advice tendered is rejected, whereas if the consent of certain persons is required, an act is invalid without it. It is equally clear that the ordinary rules of prudence require superiors, particularly in matters of gravity, to seek the opinion of others who are competent to speak, even though this may not be ordered by any positive law.

The question to be decided is whether, in the event of a superior failing to consult certain persons, as determined by the law, his subsequent act is invalid. Reference to any of the usual commentators on this canon reveals a difference of opinion, largely due to the words “satis est ad valide agendum”, which are capable of different interpretations. The text states that it is sufficient for the validity of an action if advice is sought, but it docs not state that the action is invalid if advice is not sought. On the other hand, the word “valide” in the phrase does seem to imply that the omission affects the validity of a subsequent action. If the text read “satis ct necesse est etc.”, the meaning would be quite clear. One way of solving this doubt would be to rely on the principle that actions are presumed to be valid unless their invalidity is clear: it is not clear in this instance, since the canonists differ; therefore, for practical purposes, it is at least probable that the action is valid.

The point is fully discussed by Ojetti, who favours the view that the observance of the clause is necessary' for validity.[1] Boudinhon, however, has given what appears to us a much more satisfactory solution,[2] based on a careful comparison of this canon with others which apply it to individual cases. To the question whether the law requires the observance of this clause, everywhere and always, under pain of nullity of the subsequent actions, he answers in the negative. No principle of so general and sweeping a character can be established. An act is invalid only in those instances in which the law, expressly or equivalently, declares that advice is to be sought under pain of nullity; otherwise it is not invalid. Many examples are given of both categories. For example, in the procedure for removing a parish

[1] *Jia Pontificium,* 1927, VII, p. 13.
[1] *Op. cit.,* 1928, VIII, pp. 28-38.

priest to another parish, the priest sets out in writing his reasons for not wishing to move. Then canon 2165: "Ordinarius, si, non obstantibus allatis causis, iudicet a proposito non esse recedendum, debet, ut valide agat, super eisdem causis audire duos parochos consultores etc." Cf. also canon 2159. On the other hand, in many other canons, not only is there no mention of consultation being essential for validity, but it is occasionally merely facultative, as in 1164, §1 and 1234, §1. We think that this solution of the difficulty given by Boudinhon is correct, and the meaning of the phrase in canon 105 is that, when the law requires a consultation for the validity of an action, it suffices to hear what the persons have to say for the act to be valid.

(ii) Except in cases where consultation is optional on a superior's part, the non-observance of the clause is always unlawful, in the common law, even though the subsequent act may be, as we have seen, entirely valid. The superior has failed in fulfilling his obligations, as human beings are often wont to do, and it is open to him to repent and amend his ways. But it is necessary to remember that, in many places, there exist lawful customs which are contrary' to the common law, and the law requiring consultation is subject, like any other, to canons 25-30 and especially to canon 5.

### **436.—** Custom and Superior's Consent

IFZw/ *is the superior's obligation, in principle, to check customs "contra legem"? It would appear that, if he exercised proper vigilance, no custom would ever reach legal maturity.*

*Summa Theologica,* I–II, 97, 3, ad 3: . . . privatae personae legem facere non possunt: sed consuetudo invalescit per actus privatarum personarum; ergo consuetudo non potest obtinere vim legis per quam lex removeatur. *Ad tertium dicendum* . . . si vero multitudo non habeat liberam potestatem condendi sibi legem, vel legem a superiori potestate positam removendi, tamen ipsa consuetudo in tali multitudine praevalens obtinet vim legis, inquantum per eos toleratur, ad quos pertinet multitudini legem imponere: ex hoc enim ipso videtur approbare quod consuetudo introduxit.

Canon 25: Consuetudo in Ecclesia vim legis a consensu Superioris ecclesiastici unice obtinet.

The question is too vast to be answered adequately in a small space, but it may be kept within due limits by assuming that the law is one which is in the superior's competence to modify, e.g. a bishop's synodal law which it is becoming customary to disregard. The teaching of St Thomas, which was of great influence in the development of the law as we have it now in canon 25, establishes that it is the superior's tolerance of the non-observance of a law which gives legal force to a custom *contra legem,* even though it originated with the subject people.

The canon speaks of the superior's consent, but the Code says nothing about the manner in which this consent is given. The canonists, in addition to express approval, recognize silence as being equivalent, in certain conditions, to consent, on the principle "qui tacet consentire videtur"; but it must be, even so, a real consent, not the kind of silence induced by fear, for example in cases where the civil law is hostile to some point of canon law.

Observing, therefore, that it is becoming customary for his synodal law to be disregarded, the Ordinary may use his right and secure its observance by all lawful means; or he may judge it more prudent to tolerate the custom. Cf. *Jus Pontificium,* 1952, XII, p. 18; Guilfoylc, *Custom,* pp. 82-85.

### 437.— Conflicting Laws

*May the opinion of some authors be safely followed, permitting non-fasting Communion rather than non-observance of the paschal precept in the case of a person unable to fast?*

The paschal precept is a determining by the Church of the divine precept requiring the faithful to receive the Holy Eucharist; the law of fasting, on the other hand, is a purely ecclesiastical precept. When the two laws are in conflict, the graver one must take precedence, and non-fasting communion permitted for the purpose of communicating at Easter. This has always been taught by reputable theologians and canonists, even in days when relaxations of the Eucharistic fast were far less common than they are now. It is preferable, of course, to obtain an induit for such persons, and it is assumed that the impossibility of fasting is real and not imaginary, and that scandal is avoided. Thus Gasparri writes in 1897: "In casu practice melius est ut indultum petatur; quod si commode nequit, hac gravium auctorum doctrina quis uti in praxi poterit et debebit."[1] Amongst the modern writers we have not found anyone who rejects the teaching as improbable,[2] except, perhaps, *Collationes Namurcenses,* January 1959, p. 13.

*Since an excommunicated person is forbidden to be present at the divine offices, may it be said that he commits no sin in not obsening the Sunday precept?*

Canon 87: Baptismate homo constituitur in Ecclesia Christi persona cum omnibus Christianorum iuribus et officiis, nisi, ad iura quod attinet, obstet obex, ecclesiasticae communionis vinculum impediens, vel lata ab Ecclesia censura.

Canon 2259, §1: Excommunicatus quilibet caret iure assistendi divinis officiis, non tamen praedicationi verbi Dei.

(i) The lack of unanimity in the teaching of the authors on this question arises, firstly, from the different degrees of excommunication; secondly, from the obligations of the natural law which modify the prohibitions of the positive law. Thus, from canon 2232, §1, the censure need not be observed before a declaratory sentence, if absence from Mass involves loss of reputation; similarly, even though the probable opinion mentioned below under (iii) is accepted, which excuses a censured person from the Mass precept, the natural law may demand his presence in order to avoid giving scandal.

(ii) Passive assistance at Mass on the part of an excommunicated person who is not *vitandus* is permitted, at least by custom, in the modern interpretation of the law. The violation of the censure which denies him this[3] III,

[1] *De Eucharistia,* §1129.

[2] Cf. Cappello, *De Sacramentis,* §517; Iorio, *Tbeol. Moralis,* III, §170; Prummcr, III, §204; Génicot, II, §202.3; Noldin, III, §158 c.

right, held by many in the past to be no more than venial sin, is now rightly considered to be no sin at all.[1] The reason for this is best discerned in the milder outlook which now prevails in interpreting the law, but some modern writers go further and distinguish between prohibition and lacking a right: the *tokratns* lacks, indeed, the right to be present at Mass, from canon 2259, §r, but he is not forbidden to be present, since §2 does not require him to be turned out.[2] Hence, for the majority of excommunicated persons, who arc *tolerati,* the practical difficulty vanishes: since they can observe the precept of Sunday Mass without the sin, even venial sin, of violating the censure, they are bound to hear Mass in our view.[3] But the theoretical difficulty remains, for in the case at least of *vitandus* it appears that he is bound by the law of hearing Mass and is, at the same time, forbidden by the censure to go. Does he commit sin by missing Mass?

(iii) The view is usually held that the censure implies, as it were, a dispensation from the Mass precept, or at least an excuse from observing the law, which for the time being does not apply to the censured person.[4] This solution of the difficulty may certainly be accepted, and applied with probability to all censured persons indifferently, contrary to the opinion we have given under (ii). But its acceptance is accompanied by some misgiving, for many of the writers who defend it decline, perhaps illogically to extend it to the paschal precept, and they also, following St Alphonsu,s,[5] hold that it docs not apply to the censured person who deliberately remains under the censure for the purpose of being free from the Mass precept.

(iv) We think, therefore, that the best solution of the difficulty lies in distinguishing between right and obligation as in canon 87. Every baptized person is bound to hear Mass on Sundays and holy days of obligation, and he has the right of freely entering any place eligible for that purpose. The right is withdrawn by the censure but the obligation remains. To the objection that it is not equitable that he should be faced with sin whether he goes to Mass or whether he stays away, the answer is that the perplexity is of his own making, the situation being similar to that of a person with a vincibly erroneous conscience who commits sin whether he obeys or disobeys his conscience. He can and must free himself from this perplexity by seeking absolution from the censure, just as a person with a vincibly erroneous conscience can and must correct his error.

We are quite aware that this view is stricter than the common doctrine, and anyone is free to follow the teaching given under (iii); we adopt this view not because it is stricter but because, notwithstanding certain objections, it appears to be a more logical solution of the difficulty.

### 438.—Numerical Distinction of Laws

*Some incline to the view that a person who misses Mass on a Sunday which is also a holy day of obligation commits two sins, since the obligation attaching to the Sunday is distinct from that attaching to the feast. Is this correct?*

[1] D'Annibalc first taught this "timidus dico, forte omnium primus" in his *TheoL Moratis* I, §362, n. 19, and the view is now generally held, e.g. Ilcylcn, *De Censoris* (1944), p. 82.

[1] Coronata, *Institutiones,* IV, §1772; Vcrmcersch-Crcuscn, *Epitome,* HI, §461.

[*] Bcstc, *Introductio,* p. 917.

[*] Robcrti, *De Delictis et Poenis,* I, §3 54; Cappello, *De Censuris,* §§108 and 149.

[*] *Tbeol. Moratis,* VII, §i6t.

The numerical distinction of sins is occasionally a difficult question upon which the writers differ widely, but the present instance is simple. The best expression of a principle upon which all arc agreed is probably that of Noldin, *De Principiis,* §172: "Eodem actu pluribus praeceptis satisfieri jotest nisi constet aliam fuisse mentem legislatoris . . . Mentem autem egislatoris non esse contrariam recte coniicitur, si praecepta, quae ad eandem materiam referuntur, ex eodem motivo iniungantur." Thus, a dying person who receives Holy Communion once at paschal time observes both the precept of communicating at Easter and that of receiving Holy Communion in danger of death; but an act of almsgiving promised by vow is not performed by almsgiving imposed as a sacramental penance. In the former case the motive is the same, namely, that one's soul should be nourished with the Body of Christ; in the latter case it is plainly diverse, fulfilling a vow being quite different from performing a penance.

The motive or formal reason for the law requiring assistance at Mass on Sundays and feasts is the same; accordingly, whenever a feast falls on a Sunday, assistance at one Mass obeys both precepts, and its omission is one sin, not two.

### **439.—** Children under Seven

*Could one hold that the law of the Eucharistic fast being purely ecclesiastical does not bind children under seven, even though they may be bound by the law of paschal Communion ?*

Canon 12: Legibus mere ecclesiasticis non tenentur ... qui, licet rationis usum assecuti, septimum aetatis annum nondum expleverunt, nisi aliud iure expresse caveatur.

Canon 858, §1: Qui a media nocte ieiunium naturale non servaverit, nequit ad sanctissimam Eucharistiam admitti, nisi mortis urgeat periculum, aut necessitas impediendi irreverentiam in sacramentum.

The clause *nisi aliud,* etc., is verified in the law of paschal Communion, as may be deduced from the terms of canon 859, §1. A private reply of the *Code Commission,* 3 January, 1918, explicitly asserts that the obligation may arise before the age of seven, and it is the common teaching since the Code, notwithstanding the opinion of Iorio,[1] who thinks it more probable that children are not bound by this law until the age of seven.

To include children under seven within other laws to which they are not expressly bound, it will be necessary to show that the precept is substantially *iure divino* and that the Church law merely determines it more clearly.[2]

(i) Cappello, one of the few manualists who discuss the point,[3] holds that children under seven are bound by the law of canon 858, §1: "Contraria sententia quavis caret solida probabilitate. Verum quidem est, eos non obligari legibus mere ecclesiasticis, nisi expresse aliud caveatur. Sed praedicta lex iciunii ecclesiastici non est mere ecclesiastica eaque fundatur in ipso iure divino, quatenus Eucharistia maxima reverentia a quocunquc fideli, etiam a puero nondum septenni, suscipi debet."

[1] *Tbeot. Moratis,* III, §154.

[2] Cf. *The Sacraments,* Q. 95, where this doctrine is discussed with relation to the Sunday Mass precept.

[3] *De Sacramentis,* §498.

This view may be correct, and Capello is certainly an authority of the first rank in questions of this kind, but the reason on which it is based seems open to criticism. We have seen, especially during the war, the law of the Eucharistic fast relaxed in all directions, and it cannot be said that the Church is thereby tolerating irreverence.

(ii) The writers do not, for the most part, discuss the difficulty, but it will be found that nearly all of them give only two examples of the clause "nisi aliud expresse caveatur", namely paschal Communion and annual confession, thereby implying that children under seven are not included in the law of canon 858, §1. We have found two, however, who, from the canonical aspect at least, hold these children exempt from the law: Cicognani, *Canon Law* (1954), p. 573, and a writer in *TAmi du Clergé,* p. 89. They both, however, maintain that, from the moral aspect, the law ought to be observed. We find it difficult to accept this qualification, since the moral obligation, apart from such duties as avoiding scandal, only arises on the supposition that these children arc bound to observe the canon law. They are counselled to keep it, exactly as parents arc recommended to take even the youngest children to Mass, but in not observing it they are violating no Jaw, unless it can be shown that the Eucharistic fast is, in some sense or other, *ture divino.*

(iii) Our own view on the matter is that children under seven must be brought within the law, but not precisely for the reasons given by Cappello. On the axiom *accessorium sequiturprincipale* it would seem to follow that, once the obligation of receiving Holy Communion is established, the recipient is bound also by all other ecclesiastical laws which accompany this act: for example, the prohibition against communicating more than once daily or against communicating in the Latin rite under both kinds.

Nevertheless, owing to the uncertainty both of the law and of the reasons alleged in defence of the strict view, we think that the opinion which exempts children under seven from the law of canon 858, §1, is probable, and we would not criticize anyone who followed it in practice, provided no scandal is given.

### 440.—Computation of Time

*The diocesan "Ordo" gives the times of the aurora for different periods of the year. May one hold thatfor pt irate Masses this means legal time?*

Canon 51: Salvis legibus liturgicis, tempus, nisi aliud expresse caveatur, supputetur ad normam canonum qui sequuntur.

Canon 35, §1: In supputandis horis dici standum est communi loci usui; sed in privata Missae celebratione ... licet alia sit usualis loci supputatio, potest quis sequi loci tempus aut locale sive verum sive medium, aut legale sive regionale sive aliud extraordinarium.

Canon 821, §1: Missae celebrandae initium ne fiat citius quam una hora ante auroram vel serius quam una hora post meridiem.

(i) The law on the computation of time is subject to many doubts and difficulties, some of which have been officially solved;[1] moreover, even

[1] Cf. *Code Commission,* 29 May, 1947; Q. 140.

though no doubt may exist in a given place as to die legal hour for beginning Mass, the commentators are generous in sanctioning for appropriate reasons an advance of this hour.[1] Some, relying on reasonable custom, compute the aurora morally in the sense of it being that hour at which labourers rise for their daily work, e.g. *4* a.m.,[2] a reckoning which is, indeed, imperative in arctic regions which have long periods of perpetual night. Others, relying on the terms of the law, compute it physically in the sense that in regions where the aurora continues throughout the night there is no positive common law forbidding Mass from midnight.[3] Either of these views may be followed, especially if sanctioned by custom.

(ii) But we do not know of any interpretation which justifies beginning Mass, say, two hours before the aurora, relying on the application of canon 33, §1, to the hour specified in calendars as the aurora. If the law were that Mass may not begin before, say, 3 a.m., one could compute 3 a.m. on the basis of summer time, which would be 2 a.m. true time. But since the law puts the aurora, a verifiable fact, as the basis of reckoning, one must ascertain the time in accordance with it: the calendar indicates, for example, 3 a.m. as the true time of the aurora in the middle of April, which is 4 a.m. in summer time; it is unlawful to begin Mass in the middle of April before 3 a.m., legal time.

On the other hand the basis of the *terminus ad quern* is 12 midday, for the computation of which any of the methods mentioned in canon 53, §1, may be used for private Masses: in summer time one may begin private Mass at 2 p.m. by reckoning 12 midday on the basis of the true time. Thus Van Hove: "Hora a qua Missae celebratio inchoari potest determinatur per auroram, in qua nullus modus supputationis temporis usu venit: aurora est factum astronomicum . . . Terminus autem ad quem . . . supputari potest quocunquc fnodo legitimo."[4]

(iii) To conclude this excursion into doubts, the meaning of "private" Mass is a well-established obscurity. It may mean in this context a Mass which is neither sung nor conventual, but bearing in mind the purpose of the law, which is the convenience of the public, the more common view is that "private" means a Mass not due to be celebrated at a certain time, and excludes all parochial Masses in whatever sense the word is to be understood.

### 441.— Domicile and Quasi-Domicile

*Why is the distinction between domicile and quasi-domicile so carefully defined, since, for all practical purposes, there seems to be no difference?*

The legal notion of quasi-domicile is of comparatively recent development. Owing chiefly to the necessity of contracting marriage before the "parochus proprius", as determined by the *Tametsi* decree of the Council

1 Cf. Acrtnys-Damcn, *Tbeol. Moratis,* II, §229; Cappello, *De Sacramentis,* I, §794.
» Clacys-Bouuacrt, *Jus Canonicum,* II, p. 84.
' Génicot, *Tbeoi. Moratis,* II, §236.
4 *Commentarium Lovaniense,* I, iii, §290; cf. also *Ephemerides Litargicae,* 1929, p. 223, and Bouscarcn-Ellis, *Canon Law,* p. j τ.

of Trent, the canonists extended the notion of a true domicile (domicilium verum) in order to admit a substitute which should have the same legal effects in determining the "parochus proprius". It was held that a dwelling of far less stability than that required for a true domicile would suffice for the purposes of this law, and hence arose the theory of a quasi-domicilc, which was not, however, authentically defined, as we now have it, until 7 June, 1867.1

It is true that, at the present time, as a general principle of the common law, the legal effects of domicile and quasi-domicile arc identical, in so far as the notion determines an individual's proper parish priest or Ordinary. Thus Michiels, *De Personis,* p. 172: "Ad effectum can. 94, §1, per se ct regulariter aequiparantur domicilium et quasi-domicilium, ita ut, nisi quoad peculiarem casum contraria iuris dispoitio statuatur, parochus et Ordinarius quasi-domicilii pari iure ac parochus et Ordinarius domicilii censendi sint proprii."

There are, nevertheless, some important exceptions to this principle, and these exceptions save the distinction from being perfectly futile. One notable exception is in canon 956, which determines the proper bishop for ordination in terms of domicile alone, namely, domicile with origin or domicile with an oath of permanence. Other exceptions relate to the competence of the Ordinary's court, examples of which may be seen in the instruction of the *Congregation of the Sacraments* for Diocesan Tribunals in handling marriage causes, 15 August, 1936. Cf. articles 5 and 6, §5, which, as in canon 90, §1, give a certain preference to the Ordinary of the domicile. In local law there may be other exceptions.

### 442.—Domicile of Soldiers and Minors

*A man, aged 22, joins the army from the house of his parents where he was born. The parents die and the house is taken by strangers. When on leave the soldier stays with a relative in another parish of the same diocese and has no intention of returning to the parish of his deceased parents. Has he a diocesan domicile? Has he a quasi-domicile in the parish where he spends his leave?*

Canon 92, §1: Domicilium acquiritur commoratione in aliqua paroecia aut quasi-paroecia, aut saltem in dioecesi . . . quae commoratio vel coniuncta sit cum animo ibi perpetuo manendi, si nihil inde avocet, vel sit reapse protracta ad decennium completum.

§2. Quasi-domicilium acquiritur commoratione uti supra, quae vel coniuncta sit cum animo ibi manendi saltem ad maiorem anni partem, si nihil inde avocet, vel sit reapse protracta ad maiorem anni partem.

Canon 93, §1: Uxor, a viro legitime non separata, necessario retinet domicilium viri sui; amens domicilium curatoris; minor domicilium illius cuius potestati subiicitur.

§2. Minor infantia egressus potest quasi-domicilium proprium obtinere; item uxor a viro legitime non separata, legitime autem separata etiam domicilium.

1 *Fontes,* n. 1001.

Canon 95: Domicilium et quasi-domicilium amittitur discessione a loco cum animo non revertendi. ...

Since the condition of being without a domicile or quasi-domicile is a legal disadvantage, a person is not deemed to have put himself in this condition unless it is quite certain that he has abandoned whatever dwelling he used to have and that he has not acquired a fresh one. It is evident, in the above case, that the man retains his diocesan domicile. The parochial domicile of his parents became his own domicile when he reached the age of twenty-one, but he has relinquished it by departing with the intention of not returning. The only question, therefore, is whether he has not only a diocesan domicile but a parochial one in the place where he spends his leave.

Two elements determine the acquisition of domicile or quasi-domicile. The first is personal and physical residence, not necessarily in one's own house—a hotel or a friend's house suffices. The second element, the intention of remaining, is not always easily verifiable, unless the person has expressly declared his mind; but it can be deduced or presumed from the fact, for example, that his possessions have been transferred to the place of residence. Moreover, the intention of remaining permanently (domicile) or for over six months (quasi-domicile) is quite consistent with actually departing for the purpose of business or study or amusement or, as in our case, of serving in the army, provided always there is the intention of returning. Thus, from canon 956, a candidate for Holy Orders can acquire a domicile in his future diocese even though he departs thence to continue his studies elsewhere.

In our view, accordingly, the man is presumed to have a parochial domicile with his relative; but the matter could be put beyond all dispute by a declaration of his intention.

*If a man marries before he is twenty-one, does be lose the necessary domicile of his parents and acquire, not merely a quasi-domicile, but a domicile of bis own?*

The Code docs not settle the question as regards an emancipated minor. It does with regard to the wife lawfully separated from her husband, and the point is further elucidated by the *Code Commission,* 14 July, 1922, to the effect that malicious desertion by the husband does not permit her to acquire her own domicile, unless she has obtained a decree of separation through an ecclesiastical judge. But the principle applied to the wife may also be used to solve the above doubt.

(i) Relying on the opinion current before the Code, the canonists who discuss this difficulty hold that a minor married with the consent of his parents, required from canon 1054, can acquire his own domicile as defined in canon 92, §1. Wcrnz-Vidal, II, §12, agrees with some hesitation: "Nihil obstare videtur, quominus minor de parentum licentia, a fortiori si sit emancipatus, proprium domicilium acquirat." Michiels, *De Personis,* p. 138, is quite explicit: "Cum autem, vi can. 6, n. 2, canones qui ius vetus referunt, ex veteris iuris auctoritate atque ideo ex receptis apud probatos auctores interpretationibus sint aestimandi, etiam nunc valet duplex exceptio antea communius recepta; nimirum, domicilium necessarium habetur ab omnibus minoribus, nisi ad normam iuris civilis emancipati fuerint vel

ex consensu illius, cuius potestati subiecti sunt, proprium domicilium acquisivcrint." The reason is that the minor's subjection having ceased by emancipation or by parental consent, the legal tic which prevented the acquisition of a domicile has also ceased.

(ii) As after reaching majority, so also by emancipation before the age of twenty-one, it seems to us that the "necessary" parental domicile is likewise lost. But there is nothing to prevent the emancipated minor acquiring in the parental home cither a "voluntary" domicile or a "voluntary" quasi-domicile by the method indicated in canon 92, §1. He might, for example, continue to assist his parent in business at the parental address.

## 443.— Privilege

*Is one bound fo use a privilege? Priests enjoy in this country the faculty of using the form for infants when baptising adults absolutely. ALty one, nevertheless, use tbe adult form as contained in the Ritual?*

Canon 69: Nemo cogitur uti privilegio in sui dumtaxat favorem concesso, nisi alio ex capite exurgat obligatio.

Canon 755, §2: Loci Ordinarius potest gravi et rationabili de causa indulgcre ut caeremoniae praescriptae pro baptismo infantium adhibeantur in baptismo adultorum.

Canon 744: Adultorum baptismus, ubi commode fieri possit, ad loci Ordinarium deferatur, ut, si voluerit, ab eo vel ab cius delegato sollemnius conferatur.

*S.C. Propaganda,* 12 May, 1867; VIIth Westminster Diocesan Synod (1868), App. vi: SSmus ... benigne concessit... facultatem utendi in adultis sacro fonte abluendis breviori formula pro Baptismate parvulorum in Rituali Romano praescripta, omissa longiori pro adultis ibidem statuta, dictamque facultatem Missionariis sibi subditis subdclcgandi. . . .

(i) In the common law it is clear from the above texts that one is not bound to use the faculty, provided that the candidate as well as the minister prefers the longer form for adults given in the Ritual; we think it necessary to consider the candidate's wishes, from the terms of canon 69, since the rite for adults is so much longer and more intricate. The faculty for using the form for infants, which used to be obtained by induit, is now conceded to all Ordinaries in canon 75 5, §2. Neither in the terms of the former induit, nor in canon 755, §2, can we discern any direction that the form for infants not only may but must be used. On the contrary, the Ordinary may permit the shorter form only for a grave and reasonable cause, and this is assumed to be present in the Ordinary's judgement whenever the permission is included in a priest's faculties. Occasionally, faculties arc so worded that the priest is himself required to form a judgement that there is a grave cause, e.g. "in baptismo adultorum caeremonias praescriptas (adhibeas) pro baptismo infantium, gravi et rationabili de causa, ipsius sacerdotis conscientia onerati".1

Accordingly the *Ordo Administrandi,* Π, iv, refers the priest to the

1 *Irish Ecclesiastical Record,* 1924, XXIV, p. 406.

*Rituale Romanmn* for the solemn Baptism of adults, a reference which is ample justification for using the longer form if one docs not desire to take advantage of the induit.

(ii) Since, however, the Baptism of adults belongs in principle to the bishop, he is within his right in requiring delegated priests to use the form for infants. Thus in *Middlesbrough Statutes* (1923), n. 99, we read: "In the solemn Baptism of adults the ceremonies prescribed for infant Baptism are to be used."

## 444.—Deficiencies of the Code

*Are there any books or articles pointing ont tbe defects in onr Code of Canon Law?*

The deficiencies and *lacnnae of* the Code have frequently been pointed out by Roman canonists, notably by writers in *Jns Pontificiam,* e.g. 1955, p. 145; 1956, p. 182; 1939, p. 71. One observed in 1932 that the rigorous perfection of form which distinguished the ancient Roman law' could not be expected in a Code of Canon Law, but he proceeds: "sincere agnoscere debemus plerumque eos non immerito reprehendisse in eo rationem loquendi . . . Sunt proinde c Codice nostro expungendae, absque ulla misericordia, variae unius eiusdemque conceptus acceptiones, quae vel e multiformi locutione veterum decretalium, vel c diverso modo concipiendi ac loquendi compilatorum prodiere. Qui finis satis facile attingi poterit, si, firmatis antea irrevocabiliter conceptuum omnium definitionibus, postea, unica eaque rigidissima adhibita methodo, pedetentim Codex universus ad trutinam revocatus fuerit".

Morsdorf's study of the Code terminology is of typically German thoroughness which no serious student of the Code can disregard.[1] I le draw's attention to obscurities and inconsistencies, and many of his points are somewhat academical and at times unreasonable. The thoroughness w'ith which he has pursued his criticism is, at first, rather disconcerting. But, on the whole, the criticism is just and will contribute to a more perfect text at some future time. Before Cardinal Gasparri undertook his monumental labours there had been no attempt at codification for six hundred years. In codifying existing laws and preserving the terminology employed in ancient texts side by side with that of more recent ones, it w'as inevitable that some obscurities should be produced. If the work had not been pressed on with speed by Pius X it w'ould still have been in process of formation. It has already been officially interpreted by the Code Commission, whose many decisions have clarified the text considerably. All this work is paving the way, we suppose, for a *Codex Novissimus.* But we hope the day will be long delayed. Whatever the shortcomings of the present one may be, we have got used to finding our way about it, and have no liking to begin all over again. The Code of Justinian was itself subject to a second recension, but Dr Morsdorf is of the opinion that the time has not yet arrived for a revision of our Code.

1 Dr iur. Klaus Môrsdorf. *Die Ktchstspracbe des Codex luris Canonici.* Paderborn, '937-

### 445.—Congregation of Rites

*Is there in existence a volume containing all the recent decrees of this Congregation? One often sees five volumes entitled "Decreta Authentica", but they do not go beyond* 1899.

The five volumes of *Decreta Authentica* referred to were published in Rome at the office of *Propaganda* between the years 1898 and 1901. The last volume is a very full index. These may often be seen in second-hand book catalogues.

Continuing the enumeration of the documents nn. 4052 to 4284, Volume VI (Appendix I) was published, with a full index, by the Vatican Press in 1902, containing decrees issued between the years 1900 and 1911. A similar Appendix, II, appeared in 1927 for the years 1912-26, nn. 4285-4404.

The decrees issued since 1926 have not yet been printed as part of the *Decreta Authentica* of the Congregation. But a most convenient collection for the years 1927-46 has been published by *Ephemerides Eilurgicae* and may be obtained from the office of the journal, Via Ventiquattro Maggio, 10, Rome. The texts include those printed in the *Ephemerides* and obtained from private sources, as well as those publicly promulgated in *Acta Apostolicae Sedis.*

Actually the only way to keep absolutely up to date with the decrees of this and the other Roman Congregations is to consult the ./hT» *Apostolicae Sedis,* or some journal such as *Ephemerides Eilurgicae, Periodica,* or *The Clergy Review.*

## §2. JURISDICTION AND FACULTIES

### 446.—Ordinary Jurisdiction of Parish Priest

*If a parish priest from diocese "A" accompanies his parishioners on a pilgrimage in diocese "B", may he validly and lawfully absolve them in "B" from cases reserved "ratione peccati" in "A"?*

Canon 401, §1: Poenitentiarius canonicus . . . obtinet a iure potestatem ordinariam . . . absolvendi etiam a peccatis et a censuris Episcopo reservatis, in dioecesi extraneos quoque, et dioccesanos extra territorium quoque dioecesis.

Canon 875, §1 : Ordinaria iurisdictione ad confessiones excipiendas . . . potiuntur . . . pro suo quisque territorio Ordinarius loci, et parochus aliique qui loco parochi sunt.

Canon 881: §2: Qui ordinariam habent absolvendi potestatem, possunt subditos absolvere ubique terrarum.

Canon 900.3: Quaevis reservatio omni vi caret: . . . Extra territorium reservantis, etiamsi dumtaxat ad absolutionem obtinendam pocnitens ex eo discesserit.

The question, which is concerned not with reserved censures but with reserved sins, raises an interesting point, though many Ordinaries never

use their powers to reserve sins nowadays, since the law is so generous in conceding the faculty to absolve them, as in canons 899, §3, and 900. It is not in dispute that a penitent from diocese "A" may be absolved in "B" by a local confessor, and that this confessor in "B" may absolve from sins reserved in "A" unless they are also reserved in "B". Nor is it in dispute that a parish priest of "A" may in principle absolve his own parishioners in "B", and that he may absolve them from sins reserved in "B". But there is some disagreement whether he may in "B" absolve his own parishioners from sins reserved in "A", since this would mean that he has wider powers outside his parish than within it, which is unreasonable.

(i) It seems to us that the logical application of the rules requires the answer to the above question to be in the negative. The jurisdiction enjoyed by the parish priest over his own parishioners wherever they may be (canon 881, §2) is exactly the same as his jurisdiction over them when they are within his parish. It is ordinary jurisdiction but subject always to the Ordinary's power of reserving certain sins: if he cannot directly absolve a parishioner from a reserved sin when the confession is made within his parish, neither can he do so when the confession is made outside it. The rule of canon 900.3, declaring reservations to be of no effect outside the territory of the reserving authority, has reference to confessors whose jurisdiction is obtained from a source other than that of the reserving authority; but the parish priest's jurisdiction is obtained through his appointment by the reserving authority, and it is by virtue of the same that he can absolve parishioners wherever they may be. Consequently the correct solution seems to be that he cannot validly absolve his parishioners from reserved sins in the circumstances of the above question: his remedy is to send the penitent to a confessor in "B", or else himself obtain faculties from the Ordinary of "B". The solution is confirmed by the terms of canon 401, §1, granting powers to the canon penitentiary in the above circumstances, for it is unlikely that the parish priest's powers are to be made the equivalent when he is outside his own parish. The only authority we can find cxplicidy supporting this view is Dr O'Neill in the *Irish Ecclesiastical Record;*[1] Farrugia[2] agrees in so far as he only recognizes the power of the parish priest in this case provided he enjoys in diocese "A" the habitual faculty of absolving from sins reserved to the Ordinary; he then, it appears, receives *ab homine* what the canon penitentiary receives *a iure,* and for practical purposes the two arc identical.

(ii) This view, which we believe to be theoretically correct, is not accepted by at least two writers of repute relying on canons 881, §2, and 900.3. Aertnys-Damen[3]: ". . parochus (v.g. occasione peregrinationis) extra diocccsim paroecianos ab omnibus reservatis absolvere potest. Habet enim vi iuridictionis ordinariae potestatem eos ubique terrarum absolvendi; vi huius canonis (900.3) autem reservatio propriae dioecesis vim non habet; reservatione autem dioecesis in qua versatur non tenetur, quia ab huius Ordinario iurisdictionem non recepit." Canon V. Couckel[4] gives the same solution, and Merkelbach[6] agrees, though with some hesitation.

1 1924, XXIII, p. 300.
* *De Casuum Conscientiae Reservations,* §23.
*1 Tbeol. Moralis,* II, §392.
*4 Collât. Brugen.,* 1928, p. 2j6.
* *Quaestiones de Poenitentiae Ministro,* p. 41.

We think that this liberal view is cxtrinsically probable and that it may safely be followed, notwithstanding what we have written under (i). The point is, at least, a *dubium iuris* covered by canon 209.

### 447.—Parochial Jurisdiction in Military Camps

*Do parish priests and their assistants enjoy jurisdiction for validly absolving soldiers in a military camp situated witbin the parish, but not under thejurisdiction of the local Ordinary?*

Canon 873: Ordinaria iurisdiccionc ad confessiones excipiendas pro universa Ecclesia, praeter Romanum Pontificem, potiuntur S.R.E. Cardinales; pro suo quisque territorio Ordinarius loci, et parochus aliique qui loco parochi sunt.

Canon 878, §1: Jurisdictio delegata aut licentia audiendarum confessionum concedi potest certis quibusdam circumscripta finibus.

Canon 881, §1: Omnes utriusque cleri sacerdotes ad audiendas confessiones approbati in aliquo loco, sive ordinaria sive delegata iurisdictione instructi, possunt etiam vagos ac peregrinos ex alia dioecesi vel paroecia ad sese accedentes . . . valide et licite absolvere.

Canon 451, §3: Circa militum cappellanos sive maiores sive minores, standum peculiaribus Sanctae Sedis praescriptis.

*Facultates Castrenses Americae Septentrionalis,* i July, 1940; Bouscarcn, *Digest,* II, p. 586: Jurisdictio Ordinarii Dioeccsani et Parochi localis: (1) Ratione territorii jurisdictionem habent cumulativam cum Vicario Castrensi et Cappellanis eius super subditos Vicariatus Castrensis. (2) In locis militibus destinatis jurisdictio ecclesiastica exerceri debet imprimis a Vicario Castrensi ciusque Cappellanis et deinde semperque iurc proprio ab Ordinariis Dioeccsanis et Parochis localibus de consensu Vicarii Castrensis Auctoritatisque Militaris.

S *Poenit.,* 31 January, 1936; *Apollinaris,* 1937, X, p. 352: · · · cum circa verba *de consensu Ordinarii loci,* quae S. Pocnitentiaria in nonnullis rescriptis, praesertim concessionem facultatum personalium respicientibus, apponere solet, quaesitum esset: (1) utrum consensus requiratur ad liccitatem an ad validitatem; (2) quid iuris, si Ordinarius positive recuset consensum; dic 31 Januarii, 1956, respondit: adi, affirmative ad primam partem, negative ad secundam; ad 2, provisum in primo.

(i) The local clergy may not lawfully hear confessions in a camp situated within the parish served by them, unless they have obtained permission from the ecclesiastical and military authorities of the camp. This is self-evident and applies equally to hearing within the parish confessions in any other church or chapel which has a rector distinct from the parish priest.

(ii) In the common law such absolution in our opinion is valid, even though this permission has not been obtained. The phrasing of the faculties given to American chaplains is in perfect harmony with the common law, as a careful perusal of the above texts will show.

(iii) Bearing in mind, however, the direction of canon 451, §3, and also the fact that local Ordinaries, in agreement with the military Ordinariate, may have withdrawn the camp from the jurisdiction of the parish priest and other local clergy, it is quite possible that local law sanctions a different

solution from that given under (ii). The clergy must get informed by consulting their own Ordinary. We believe, however, that, generally speaking, the solution given under (ii) applies also to this country.

### 448.—Jurisdiction Supplied in Doudt

*Is some just cause necessary before one can invoke the title of supplied jurisdiction in canon* 209?

Canon 209: In errore communi aut in dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia pro foro tum externo, tum interno.

(i) The canon provides a written law for what previously was largely a matter of custom or interpretation. There is no question of the validity of absolution given with supplied jurisdiction, within the terms of the canon; nor docs the question of lawfulness arise when coming to a decision about an action already performed in good faith. But in deciding, before the event, whether one is entitled lawfully to give absolution with the supplied jurisdiction of canon 209, the point at issue is whether some just cause is or is not necessary. In the case of common error the writers are agreed that a just cause is required: Cappello, *De Poenitentia* (1958), §493; Noldin, *De Sacramentis* (1935), §347; *The Sacraments,* Q. 194.

(ii) In the ease of positive and probable doubt our own preference is for the necessity of some justifying cause, following St Alphonsus, VI, §573 ; Wouters, I, §104; Marc-Gestermann, II, §1762. Others, as Tanquerey, 1, §431, require a just cause "in dubio facti" but not "in dubio iuris". The reason for our preference, notwithstanding the fact that the Code makes no mention of the necessity of a just cause, is that the Church is not presumed to "supply" jurisdiction *ad liceitatem* unless there is some reason for so doing.

(iii) But the opposite and more liberal view which requires, indeed, a just cause for invoking the title of common error, but not in cases of positive and probable doubt, is very widely held, though no very satisfactory reason is given for distinguishing between the two cases. Thus Cappello, §4995 Noldin, §347; Tummolo-Iorio, II, §542. Their teaching may certainly be followed. Gougnard, *De Poenitentia,* p. 268, and Priimmcr, *Tbeol. Moralis,* III, §414, whilst holding that no just cause is required, recommend that certain jurisdiction should be obtained from the ordinary channels as soon as possible. This teaching, which seems reasonable, will perhaps satisfy both schools of thought.

### 449.—Jurisdiction Supplied in Common Error

*A visiting priest, the friend of the parties, assisted at a single marriage in a church without delegation from the parish priest. Does the title of "common error" supply the defect? If not, what should be done about the marriage?*

Canon 209: In errore communi aut in dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia pro foro tum externo tum interno.

The notion of jurisdiction being supplied in common error, adopted from Roman civil law and extended by canonists in many directions, had its origin in custom, and its application has always been in much dispute. Pre-Code writers used to require a "titulus coloratus", e.g. taking possession of a benefice invalid owing to some legal defect. There is agreement since the Code that a "titulus coloratus" is no longer required.

Many post-Code writers, however, did not extend the principle to assistance at marriage, for this is not, properly speaking, an act of jurisdiction; since the Rotal decision, 22 November, 1927,[1] there can be no serious doubt that it can be applied to marriage, from canon 20.

The sole difficulty now is in defining what is "common" error. It is actual or *de facto* when all the people in a place erroneously think that the priest enjoys jurisdiction; e.g. a supply priest, borrowed for some weeks from another diocese, who has forgotten to apply for jurisdiction; about the sufficiency of this there can be no doubt. It is said to be interpretative or *de hire* when, from the performance of some public act, the faithful in general would draw the false conclusion that jurisdiction is enjoyed, although actually they do not draw this conclusion because, except for the few people concerned, they are not aware of the priest's act, or even of his presence amongst them; about the sufficiency of this there is considerable doubt, since it is by no means evident that the error can be called "common" in such case.

(i) That it suffices is taught by some authorities widely used, as Cappello,[2] Vermecrsch-Crcusen,[3] and Wcrnz-Vidal.[4] Their reason is that if the basis or foundation of the error made by a few persons, or even only by one, is of its nature liable to deceive the whole community, because of its publicity, such error can rightly be called common or public. This view has the great advantage of closing the inquiry as to how many persons must be in error before it can be called common, a question which resembles asking how many make a crowd, and which increases the doubts and anxieties which this friendly canon 209 sets out to allay.

(ii) Some writers, however, in the Roman journals,[5] who have examined the question more thoroughly than the manualists, are unable to accept this view, and they arc undoubtedly supported by the classical pre-Code commentators. They arc unable to recognize a "common" error if it is made only by a few, for error, being a judgement of the mind, cannot rightly be attached to the basis or foundation which gives rise to it. Their chief objection is one that will carry weight with all: this interpretative or *de hire* notion of common error would, if acted upon, render futile all the elaborate rules requiring jurisdiction for confessions, marriages and other acts; it will suffice for any priest lacking jurisdiction merely to be seated in a confessional publicly in order to obtain faculties in common error, a view which seems unreasonable and even absurd.

(iii) Wc think that the stricter interpretation given under (ii) is more likely to be correct, but until the point is clarified by a Roman decision, the question is whether the view given under (i) is at least probable, or, in other

[1] R.D., 1927, XIX, p. 456·
[2] *De Poenitentia,* §490; *De Matrimonio,* §670.
[3] *Epitome,* I, §322.
[4] *lus Canoniatm,* II, §381.
[5] *Apollinaris,* 1954, p. ***n;Jtu*** *Pontificium,* 1938, p. 97.

words, whether we have here a *dubium iuris* which is also covered by canon 209.

Dr Toso, notwithstanding the fact that he himself inclined to this view at one time, is of the opinion that it is not probable and that the point is not a *dubium iuris'j* its currency is due, he thinks, to the regrettable influence of the moral theologians, amongst whom Bucccroni was the first to propound the notion of an interpretative or *de iure* common error.

We are of the opinion that it is a *dubium iuris,* and that the interpretation outlined in (i) is probable, provided the jurisdiction is being claimed continuously, even though actually used only on one occasion. It is claimed continuously, for example, in the case of a confessor who is prepared to hear many confessions, or of an assistant priest who is prepared to function at all marriages during the period of his stay in a parish. We probably have here, it seems, a true basis for common error, even though *de facto* the community is not deceived because unaware of the priest's presence.[2]

But if it is a question of one act, performed by a priest in circumstances where jurisdiction is not claimed continuously, but only on this one occasion, it seems to us, no matter how public the act may be, that there is no *de iure* common error. The Rotal decision, 27 December, 1927, referred to an army chaplain who was thought, erroneously, to enjoy the power of assisting at all marriages within his military jurisdiction.

(iv) Hence, in our view, the marriage described in the question is invalid. It should be revalidated, cither by getting the parties to renew their consent before a properly qualified priest and witnesses, or by seeking a *sanatio.*

## 450.— Delegated Jurisdiction

*In one English diocese "X" the clergy enjoy a faculty from the Ordinary expressed as follows: "We hereby grant permission to the clergy of our diocese to communicate in our name to any priest holding faculties in England or Wales leave to hear their own confessions." It is maintained that, when a priest of this diocese is sojourning outside it, he can use this faculty for the purpose of going to confession to a priest who has no faculties from the local Ordinary, provided this confessor has faculties from some other English Ordinary. Is this correcti*

Canon 874, §1: lurisdictioncm delegatam ad recipiendas confessiones quorumlibet sive saecularium sive religiosorum confert sacerdotibus tum saecularibus tum religiosis etiam exemptis Ordinarius loci in quo confessiones excipiuntur. . . .

(i) That jurisdiction is necessary *iure divino* for valid absolution is certain. It may be obtained in all sorts of ways, ordinary or delegated, and it is supplied by the Church in certain contingencies, as in danger of death or in common error.

But if it be asked whether confessional faculties may be obtained, as in the above question, by the use of a power of delegation outside the territory of the Ordinary who conceded the power, the answer must clearly and certainly be in the negative. The very useful faculty granted in diocese

[1] *Jus Pontificium,* 1938, p. 169; 1923, p. 148.
[2] *Op. fit.,* 1938, p. i6j.

"X" by the Ordinary of "X" can be used only within the diocese of "X". If the confession is heard outside this territory, the jurisdiction to be valid must be obtained by some channel other than delegation from the Ordinary of "X". It is beyond the power of the Ordinary of "X" to grant delegated faculties to priests, even his own priests, for use outside his own territory. This is quite evident from the terms of canon 874, §1, "Ordinarius loci in quo confessiones excipiuntur", and from the general principles of delegated jurisdiction in canons 196-210.

(ii) We must admit, however, that the opposite view is quite often held by priests for the purpose of hearing each other's confessions when outside the diocese of "X". They arc often right in deciding that a fellow priest enjoys faculties, but they arc wrong in tracing this power to delegation obtained from the Ordinary of "X". The reason is that, in many dioceses, a faculty equivalent to that enjoyed by the priests of "X" is differently expressed. The local Ordinary grants jurisdiction directly to all visiting priests for the purpose of absolving other priests, as in n. 151 of the *Liverpool Synod,* 1945. It will be necessary, therefore, for the priests of the diocese "X" to verify whether they enjoy this faculty from the local Ordinary of the diocese in which they arc sojourning. If they do, then the absolution of a fellow priest is valid, not by virtue of delegated faculties obtained from the Ordinary of "X", but by those obtained from the Ordinary of the diocese where the confession is heard. Cf. also Q. 196.

## 451.— Delegated Jurisdiction Ceasing

*A priest belonging to a religions order is given faculties for three years in a diocese in which there is a house of the order and to which he is attached. Before the three years expire he is moved io another house in a different diocese. If be subsequently returns to the former diocese, may he avail himself of the faculties originally given, provided the three years have not elapsed?*

Canon 54, §5: Si tempus constet uno vel pluribus mensibus aut annis . . . et terminus *a quo* explicite vel implicite assignetur: menses et anni sumantur prout sunt in calendario.

Canon 207, §1: Potestas delegata exstinguitur, expleto mandato; elapso tempore aut exhausto numero casuum pro quo concessa fuit.

Canon 874, §1: lurisdictionem delegatam ad recipiendas confessiones quorumlibet sive saecularium sive religiosorum confert sacerdotibus tum saccularibus tum religiosis etiam exemptis Ordinarius loci in quo confessiones excipiuntur; sacerdotes autem religiosi eadem ne utantur sine licentia saltem praesumpta sui Superioris. . . .

The *pagella* of faculties may be issued with the restriction "donec munere tuo fungeris", or more commonly in this country "dummodo in dioecesi permaneas"; the latter qualification is ampler in meaning than the former in all cases where faculties arc granted for a certain period of time, since the faculties will continue even when the office is relinquished, provided the recipient remains in the diocese. If the formula is "donec munere tuo fungeris" it is certain that the faculties cease in the case of a religious who has received them, for example, as a convent chaplain, from the moment this office is relinquished.

In the ease where the formula is "donee in dioecesi permaneas" it is equally certain that the faculties cease when the recipient has left the diocese with no prospect of returning; for example, when a secular priest has become incardinatcd in another diocese. This cannot happen with religious, as long as they arc ascribed to the religious institute, nor can they choose to dwell permanently in any given diocese, but are subject to the direction of superiors. We think, therefore, that it is for the religious superior to decide whether one of his subjects is being removed temporarily, and with the prospect of returning within the time limit of the faculties, in which ease the clause "dummodo in dioecesi permaneas" is verified, and the religious subject may avail himself of unexpired faculties on his return. If the removal from the diocese is intended by the superior to be permanent, and the subject is nevertheless recalled before the time limit has expired, it seems to us that the faculties have ceased and must be renewed. We have reached this conclusion on analogy with the rule of canon 95: "Domicilium et quasi-domicilium amittitur discessione a loco cum animo non revertendi." We cannot, however, find any commentator who discusses the point, and many may think that this interpretation is at least extremely doubtful, and that canon 209 may be used.

In some *pagellae* which we have examined the faculties are given for a period of time with no restrictive clause, in which ease there is no problem to discuss.

It may be noted, finally, that from canon 34 the time of three years must be reckoned according to the calendar, and not by deducting periods during which the recipient is outside the diocese.

## 452.—Territorial Limits

*It is the custom in many English dioceses for faadties in diocese* "^4" *to be given to the parish priests bordering parishes in diucese* "B", *and the faithful though domiciled in* l*lA" habitually attend the bordering parish church in "B". May the parish priest of "B" properly request from the Ordinary of "A" the power to administer confirmation, in these circumstances, to the faithful of "A"?*

Canon 782, §3: Hac facultate . . . valide uti nequeunt, nisi intra fines sui territorii. . . .

*S.C. Sacram.,* 14 September, 1946, I, 2; *The Clergy Review,* 1947, XXVII, p. 57: Praefati ministri Confirmationem valide et licite conferre valent per se ipsi, personaliter, fidelibus tantummodo in proprio territorio degentibus....

This working arrangement for parishes on the border-line of two dioceses requires delegated jurisdiction from the Ordinary of "A", granted within the limits of the Ordinary's own powers to a parish priest of the neighbouring diocese "B". These powers cover jurisdiction for the sacrament of penance since it is within the Ordinary's competence, from the common law, to give confessional jurisdiction within his diocese to any priest whether belonging to his own diocese or not.

The parish priest of "B" may validly and lawfully confirm the subjects of "A", provided they are at the time of confirmation actually within his own parish in "B", and he needs for this purpose no special faculty or permission from the Ordinary of "A".

But he cannot validly confirm anyone who is at the moment of confirmation outside the limits of his own parish in "B"; nor *a fortiori* anyone outside the limits of his diocese. The territorial limits must be strictly observed under pain of invalidity both by vicars apostolic, as in canon 782, and by parish priests who enjoy the new faculty, as we find forcefully expressed in the second paragraph of n. 2 of the document.

He may properly apply to the Ordinary of "A", if the circumstances warrant it, for the necessary faculty which, if obtained, would be by virtue of a particular induit from the Holy See.

### 453.—Faculties During War

*For the purpose of determining precisely the cessation offaculties is the date of the end of the war to be reckoned that of the armistice or of the formal signature of the peace treaty?*

(i) The faculties given, or recalled to our minds, in view of the faithful both military and civil being in danger of death[1] ceased with the armistice: this principle may be deduced from the wording of the faculties, e.g. "milites... prout in mortis periculo constitutos" "ne christifidcles religionis subsidiis in vitae discrimine destituantur" "liceat sacerdotibus, instante mortis periculo durantibus praefatis (aeris) incursionibus". The rule of the common law at all times permits, when there is danger of death, absolution from reservations, non-fasting communion, and general absolution. These faculties have ceased in principle, though there may still be exceptional classes who are in danger of death owing to their occupation, e.g. minesweepers or those handling unexplodcd bombs.

(ii) Other faculties granted by a general induit during the war, not being necessarily applicable only to those in danger of death, continue until they are withdrawn by the Holy See, e.g. the powers granted to those in internment camps.[2]

Similarly, personal induits obtained by army chaplains, e.g. the portable altar privilege or the faculty of granting various blessings and indulgences, cease when the office is relinquished or when they arc withdrawn by the Holy Sec. Faculties of this kind granted during the war 1914-18 were not withdrawn till 1 March, 1919.[3]

(iii) Ordinaries, through faculties obtained from the Holy See, relaxed the Eucharistic fast in many directions during the war to meet the necessities of the faithful, even when they were not in danger of death. These relaxations varied slightly in different dioceses, and were sometimes promulgated in the Catholic press, sometimes in episcopal communications sent to the clergy. We have never seen the text of these rescripts, but we have the impression that they were papal induits the application of which was left to the discretion of Ordinaries? The faculty of saying three Masses is clearly

[1] Cf. *Tbe Clergy Review,* 1940, XVIII, p 504.
[1] *Op. rit.,* 1941, XXI, p. 54; Q. 213.
[*] *A.AS.,* 1919, XI, p. 74.
[*] Cf. the text of similar induits for Germany published in *Ephemerides Uturgicae,* 1941 (Jus et Praxis), p. 6: ". . . ut pro cuiusque arbitrio et conscientia gratiam extensionis indulgerc valeant iuxta petita . . .".

of this category. In certain dioceses the clergy have been informed by the Ordinary that faculties granted during the war ceased at the end of 1945; it is for the clergy to obey or ascertain the directions of their Ordinary, whether local or military. Personal induits, however, may still be obtained by nurses and others who find it difficult to observe the Eucharistic fast.

The relaxation of the ecclesiastical fasting and abstinence laws, except for Ash Wednesday and Good Friday, was likewise left to the discretion of local Ordinaries,[1] who everywhere in this country, to the best of our knowledge, desire the relaxation to continue at the time we are writing.

### 454.—Faculties of Pious Associations Withdrawn

*Reference is frequently made io the withdrawal in* 1935 *offaculties formerly obtained byjoining some pious association. It would be contentent to have the text of this document, an indication of the faculties that have been withdrawn, and some information about the most expeditious way of obtaining faculties since their withdrawal in* 1933.

[1] *Poenit.,* 20 March, 1933: *A.A.S.,* 1933, XXV, p. 170. de facultatibus **INDULGENTIAS PIIS OPERIBUS AUT DEVOTIONIS OBIECTIS ADNECTENDI DEQUE ANALOGIS QUIBUSDAM INDULTIS, TANTUM DIRECTE A SACRA PAENITENTIARIA IN POSTERUM CONCEDENDIS.**

Consilium suum persequens rei sacrarum Indulgentiarum reformandae, cohaerenter cum iam latis identidem hunc in finem postremis hisce temporibus similibus dispositionibus, Sacra Paenitcntiaria Apostolica, quo melius ordinentur facultates Indulgentias adnectcndi piis quibusdam operibus aut devotionis obicctis et alia quaedam analoga indulta, quibus privati sacerdotes saepe saepius donari postulant, de expresso mandato Ssmi Domini Nostri, sequentia statuit ac decernit:

Concessiones omnes et singulae, piis fidelium associationibus cuiuscumque nominis vel naturae, etsi forte sacerdotibus tantum constantibus, quovis loco aut tempore seu modo vel titulo hucusque factae, largiendi privatis sacerdotibus facultates et indulta quae sequuntur, nempe, benedicendi devotionis obiccta cisquc Indulgentias Apostolicas aut Sanctae Birgittac, ut aiunt, adnectendi—benedicendi crucifixos ad lucrandas Indulgentias pio Viae Crucis exercitio pro legitime impeditis adnexas necnon ad plenariam in mortis articulo Indulgentiam acquirendam—impertiendi benedictionem papalem in fine concionum—concedendi indultum, quod dicunt, altaris privilégiât! personalis, praesenti Decreto revocantur, abrogantur atque ominino abolentur ita ut ab huius ipsius Decreti evulgationis die omni prorsus vi careant omnique efficacia destituantur.

Qui, igitur, sacerdotes hac vel illa ex supra recensitis facultatibus aut hoc vel illo ex supra memoratis induitis posthac augeri cupiant, nonnisi directe atque immediate a Sacra Pacnitentaria desideratam gratiam se obtinere posse sciant, oblatis toties quoties peculiaribus proprii Ordinarii ad rem litteris commendatitiis.

Quod vero ad privilegia attinet quibusdam Ordinibus vel Congregationibus religiosis concessa benedicendi coronas casque ditandi Indulgentiis

[1] *Tbe Clergy Review,* 1942. XXII, p. 234; *A.A.S.,* 1946, XXXVIII, p. 27.

—adncctendi crucifixis Indulgentias Viae Crucis, in aliquibus rerum adiunctis etiam absque stationum percursu lucrifaciendas—stationes Viae Crucis erigendi, haec ipsis manent, ea tamen lege ut in posterum membra corumdem Ordinum vel Congregationum uti eisdem valeant tantum, personaliter, non autem ita ut ea concedere quoque possint aliis sacerdotibus ad eosdem Ordines vel Congregationes non pertinentibus: hi enim omnes facultates, usui talium privilegiorum necessarias, tantummodo a Sacra Paenitentiaria, modo superius indicato, obtinere poterunt. Contrariis. . . .

Datum Romae, ex aedibus Sacrae Paenitentiariae, die 20 Martii, 1933.

L. Card. Lauri, *Paenitentiarius Maior.*

The faculties withdrawn by the decree arc clearly indicated therein, and readers may find it more useful to have a list of those that remain and which arc still attached to the privileges enjoyed by priest members of various pious associations. These are: (λ) the power of blessing and imposing various scapulars, medals and girdles; (Z›) the power of blessing the same with one formula; (‹▮) permission to anticipate Matins and Lauds at midday. Cf. Q. 579.

Priests in possession of the abrogated faculties before 1 April, 1933, retain them, since the decree is not retrospective.

The only method of obtaining the abrogated faculties since 1 April, 1933, is by applying through one's Ordinary to the Holy Sec. We learn from *The Jurist,* 1942, II, p. 305, that the apostolic delegate in America has circulated the following instruction from the *Sacred Penitentiary*: "Quo magis aestimetur excellentia facultatum et indultorum, quae indulgentias respiciunt quaeque ab hoc S. Tribunali sacerdotibus concedi solent, Rcvmi Ordinarii litteras commendatitias ad rem ne tribuant nisi sacerdotibus, pro quibus speciales militant rationes, *in precibus* exponendae. Nulla itaque posthac ratio habebitur petitionum, quae ad praefatos spirituales favores obtinendos huic S. Tribunali aliter pervenerint." A similar instruction may have been sent to Ordinaries in this country; in any event, by this time the practice of each Ordinary in forwarding petitions will have been established, and priests have merely to apply for what faculties they desire, leaving it to the Ordinary to obtain them if he is able and willing to do so.

### 455.—Missionary Union Faculties

*The membership of this association would increase, perhaps, if the privileges attached to it were more widely known. Could these be fully explained?*

1 he general statutes of this "Pia Unio Cleri pro Missionibus" were revised in 1957. Priests, both secular and regular, may join by applying to the Secretariate of the A.P.F., 23 Ecclcston Square,' S.W.i, or through their local diocesan director; theological students may do so through the seminary secretary of the Union.

As in all similar societies, some privileges are given as an inducement to join, but they were all considerably curtailed, unfortunately, by a decree of the *Sacred Penitentiary,* 20 March, 193 51; all the details connected with

1 See Q. 454.

indulgences and the like are subject to frequent and ver}' confusing modifications. Therefore, members who joined before i April, 1953, enjoy wider privileges than those who joined after that date. We believe the following details are correct at the moment, as given by a writer in *Collectanea Mechliniensia,* 1937, p. 624, and by Schlegel-Legrand, *Florilegium* (1953), p. 358. Priests desiring these or other faculties, and not possessing them from membership before 1 April, 1933, must apply for what they want to the Holy See.

### Favores Spirituales Omnibus Sodalibus Concessi

I.—Indulgentia plenaria, suetis sub conditionibus lucranda, in festis: i° Epiphaniae; 20 Ss. Apostolorum; 30 S. Michaelis Archangel!; 40 S. Francisci Xavcrii; 50 semel in mense, die ad proprium cuiusque arbitrium eligenda; 6° in articulo mortis, servatis servandis.

II.—Indulgentia centum dierum pro quolibet pietatis opera in favorem Missionum expleto.

III.—Facultas (dummodo adseriptus ad sacramentales confessiones audiendas sit approbatus) benedicendi ac imponendi, servatis ritibus ab Ecclesia praescriptis, scapularia Passionis D. N. Icsu Christi, Immaculatae Conceptionis B. M. V., SS. Trinitatis, B. M. V. perdolentis, B. M. V. a Monte Carmelo, ab Apostolica Sede approbata (cf. infra η. V).

IV.—Facultas ut supra benedicendi ac imponendi, sub unica formula, scapularia quae ut Sodales Piae Unionis imponendi facultate gaudent (Ex Audientia Ssmi Emo Praefecto Sacrae Congregationis de Prop. Fide concessa die 20 Martii 1919. Cf. *Acta Ap. Sedis,* 1919, p. 179).

V.—Facultas imponendi scapularia de quibus supra, absque inscriptionis onere in album Confratcrnitatis (Ex Audientia Ssmi Emo Praefecto S. C. de Prop. Fide concessa die 4 Martii 1920).

VI —Facultas pro omnibus adseriptis anticipandi a meridie recitationem Matutini cum Laudibus subsequentis dici, dummodo tamen officium dici iam persolverint (Ex Audientia Ssnii Emo Praefecto S. C. de Prop. Fide concessa dic 1 Dec. 1921. Cf. *Acta Ap. Sedis,* 1921, p. 565).

### Favores Spirituales Tantum Sodalibus Concessi Ante Diem i Aprilis 1933 Adscriptis

L—Facultas *(dummodo adseriptus ad sacramentales confessiones audiendas sit approbatus')* benedicendi, extra Urbem, unico Crucis signo, coronas, rosaria, cruces, crucifixos, numismata et parvas statuas cum applicatione indulgentiarum Apostolicarum (Cf. *Acta Ap. Sedis,* 1922, p. 143).

II.—Facultas, *ut supra,* benedicendi, unico Crucis signo, coronas iuxta typum rosariorum B. M. V. confectas, cum applicatione indulgentiarum, quae a PP. Crucigcris nomen habent.

III.—Facultas, *ut supra,* benedicendi coronas Septem Dolorum B. M. V. cum applicatione omnium et singularum indulgentiarum, quas Summi Pontifices eiusmodi coronis impertiti sunt.

IV.—Facultas, *ut supra,* benedicendi, unico Crucis signo, crucifixos cum applicatione indulgentiarum pii exercitii a *Via Crucis* nuncupati in favorem fidelium, qui quominus sacras visitent "Stationes" legitime impediuntur.

V.—Facultas, *ut supra,* benedicendi, unico Crucis signo, crucifixos, iisdemque applicandi plenariam indulgentiam in articulo mortis ab iis acquirendam, qui praescriptis expletis conditionibus, illos osculati fuerint aut saltem aliquo modo tetigerint (Cf. *Acta Ap. Sedis,* 1914, p. 348).

VI.—Indultum personale Altaris privilégiât!, quater in qualibet hebdomada, dummodo simile indultum pro alia dic obtentum non fuerit.

(Haec omnia per S. Poenitent. 15 November, 1918. Cf. *Acta Ap. Sedis,* 1919, p. 20.)

## §3. PENALTIES

### 456.—Conditions for Incurring Censure

*Priests normally are concerned with this subject only in the sacrament of penance. Are the conditions for incurring censure the same as for the external forum?*

The conditions arc in principle the same for incurring censures, the differences being chiefly in their absolution. Jurisdiction of the "internal forum" is for the conscience of individuals, whether it is exercised within or outside the sacrament of penance (canon 196); that of the "external forum" relates to public order amongst the whole visible body of the faithful. The distinction is a vital one and is the key to most of the difficult problems in the complex matter of reserved censures. "Si absolutio censurae detur in foro externo, utrumque forum afficit; si in interno, absolutus, remoto scandalo, potest uti talem se habere etiam in actibus fori externi; sed, nisi concessio absolutionis probetur aut saltem legitime praesumatur in foro externo, censura potest a superioribus fori externi, quibus reus parere debet, urgeri, donec absolutio in eodem foro habita fuerit" (canon 2251). The superior of the "external forum" may use lais rights if he so desires: some do, others do not, for example, in absolving from the censures of canon 2319.

"Censura punitur tantummodo delictum externum, grave, consummatum, cum contumacia conjunctum" (canon 2242, §1). The conditions for incurring a censure may conveniently be reduced to two:

(i) The commission of a grave, external, consummated crime on the part of a baptized person. Whatever excuses a person from the guilt of mortal sin, for example, smallness of matter or imperfect consent, excuses also from incurring the censure which may be attached to it. It must be external, because it is not the practice of the Church to attach a canonical sanction to the transgression of the law by a purely internal act: *De internis non judicat praetor.* But it must be noted that "external" is not synonymous with "public". The crime must also be consummated, i.e. "perfectum in suo genere secundum proprietatem verborum legis"—exactly and specifically that crime defined in the wording of the law. A censure is an onerous thing, requiring a strict interpretation, and is not incurred unless the act is committed in the sense determined by the law. Thus, the censure attached to abortion (cicctio foetus immaturi) is not incurred by one who commits craniotomy.

(ii) The commission of this act must be accompanied by contumacy, i.c. contempt of the law shown chiefly by breaking it with knowledge of the

penalty attached. Unless this is present, the person committing the crime may be a grave sinner, but the censure is not incurred. Therefore, even if an inquiry into the points mentioned under (i) results in an affirmative answer, the confessor must discover whether the penitent committed the act contumaciously before deciding that a censure has been incurred. In some eases, owing to the complexity of the law, it is most difficult to determine with accuracy, but in the ma ority of ordinary cases the absence of contumacy will usually be due to habitual ignorance of the existence of the censure, and the rules of interpretation arc fairly simple. The confessor must decide whether, in all the circumstances of the penitent's education and position, the ignorance is vincible and culpable. The worst kind of vincible ignorance is "affected ignorance" (directly choosing to remain ignorant), which never excuses from incurring a censure *l.s.* (canon 2229, §1). But, commonly, the ignorance will be caused indirectly through negligence in getting informed, and the inquiry then turns on the degree of negligence. The Church indulgently excuses from censure even those who are guilty of grave negligence in being ignorant of the law (canon 2229, §5, 1). But, there is a type of culpable ignorance so grossly inexcusable that it is called "crass", implying that no trouble whatever, not even the slightest, has been taken to get informed. Ignorance of this kind excuses from censure in the case only of those laws which contain such expressions as "praesumpserit", "scienter", "studiose", etc. (canon 2229, §2). If there is any reasonable doubt whether a censure is incurred, it is to be settled in favour of the penitent: "In poenis benignior est interpretatio facienda" (canon 2219, §1). The penitent should be informed of the law and any future transgression will usually be contumacious.

### 457.—Censures Reserved to Ordinaries

*Is it correct that cases reserved in the Code to the Ordinary, e.g. the censure attached to marriage in a Protestant church, cease daring the time of the paschal precept and when the penitent cannot leave his house owing to sickness?*

Canon 899, §5: Ipso iurc a casibus, quos quoquo modo sibi Ordinarii reservaverint, absolvere possunt tum parochi, aliive qui parochorum nomine in iurc censentur, toto tempore ad praeceptum paschale adimplendum utili, tum singuli missionaril quo tempore missiones ad populum haberi contingat.

Canon 900: Quaevis reservatio omni vi caret: 1. Cum confessionem peragunt sive aegroti qui domo egredi non valent, sive sponsi matrimonii ineundi causa.

*Code Commission,* 10 November, 1925, ad vii, 1: Utrum *quaevis reservatio,* de qua can. 900, sit tantum ratione peccati an etiam ratione censurae. 2. Utrum can. 900 agat de reservatione casuum ab Ordinariis tantum an etiam a Sancta Sede statuta. *Ikesp.* Ad 1, affirmative ad primam partem, negative ad secundam. Ad 2, negative ad primam partem, affirmative ad secundam.

(i) In the *common law,* a censure such as that attached to marriage in a Protestant church, which in canon 2319, §1.1, is reserved to the Ordinary, does not cease in the circumstances of canons 899, §3 and 900. The very

considerable difficulty in understanding reserved cases is largely due to the double principle of reservation *ratione peccati* and *ratione censurae',* it would be a considerable benefit if the Holy See were to abolish altogether the reservations permitted *ratione peccati.* At the moment, the powers of the Ordinary in reserving such cases are so restricted by canons 897 and 898, and the faculty of absolving from them is so extended in canons 899 and 900, that many Ordinaries find it is not worth while using their powers in this respect. But the distinction remains, and before dealing with a reserved "case" one must decide whether it is the sin or the censure which is reserved. It is certain from the *Code Commission* reply, 10 November, 1925, that canon 900 docs not apply to reserved censures; therefore it does not apply to the censure of canon 2519, §1.1. Neither docs canon 899, §5, refer to a censure which is reserved by the Code to Ordinaries, but only to those cases which the Ordinary himself reserves "quoquo modo", that is to say whether the reservation is *ratione peccati* or *ratione censurae.* We accept this meaning of "quoquo modo" given by Farrugia, *De Casuum Conscientiae Reserva/ione,* §27, as explained below.

(ii) *Local law* often enacts that censures *l.s.* reserved by the Code to Ordinaries, or those which the Ordinary himself reserves, come within the law of canons 899, §3, and 900. This is so in *Lancaster Statutes*, 1944, n. 91, and in *Malines Statutes,* 1924, n. 311, a useful and opportune provision which extends the Code faculty and simplifies the situation. In these dioceses, it is correct that the censure attached to marriage in a Protestant church ceases to be reserved during the time of the paschal precept and when penitents cannot leave the house owing to sickness. It will be necessary in each case to ascertain the local law, and if the faculty is not conceded therein, the censure may not be absolved except under the terms of canon 2254.

*In canon* 899, §3, *cases which an Ordinary reserves, i.e. not those reserved to him by the common law of the Code, cease in certain circumstances. Does "casus" here include reserved censures as well as reserved sins?*

The question refers to *a iure* censures *l.s.* which arc not in the common law of the Code but are in force only in the diocese: the Ordinary has attached a censure *l.s.* to a specified crime and has reserved to himself its absolution. It is the teaching of Farrugia, *De Casuum Conscientiae Reservatione,* §27, that the terms of canon 899, §5, cover not only episcopal reservations *ratione peccati* but also *ratione censurae·.* "Hinc . . . absolvere poenitentes ab omnibus casibus quos Episcopus sibi reservaverit sive *ratione sui,* sive *cum censura,* cum canon indiscriminatim loquatur de reservationc."

The reasons for doubting the correctness of this teaching may be that Lib. III, cap. ii of the Code, in which this canon occurs, is entitled "De reservatione peccatorum"; and that the *Code Commission,* 10 November, 1925, interpreting the word "reservatio" in the following canon 900, limits it to reservations *ratione peccati.*

We maintain that Farrugia's opinion is correct, though most of the usual commentators do not advert to the point. The law codified in canon 899 is in *Fontes,* n. 1502, 7, c. "a casibus quos quomodolibet sibi Ordinarii reservaverint", and commenting upon it a writer in *Periodica,* VIII, p. 188,

observes: "Ut verbum *qnomodolibet* vim aliquam habeat, casus quoque cum censura hic intclligcndi sunt." Amongst the Code commentators Farrugia is supported by Tummolo-Iorio in *Theol. Moralis,* II, §560: "Cum lex modo relata dicat a casibus quos *quoque modo* sibi Ordinarii reservaverint, probabile quidem est includi etiam censuras quas Episcopus sibi reservaverit"; Wouters, *Tbeol. Moralis,* II, §587: "A peccatis (et censuris) quae quoque modo Ordinarii locorum sibi reservaverint." The *Ecclesiastical Review,* 1922, LXVI, p. 569, teaches the same.

Some writers, on the other hand, imply perhaps that the reserved episcopal censure is not included in the terms of canon 899, §3, because, following the Code division, they deal with the subject uniquely under the aspect of reserved sins, but we have found only one who explicitly states that this canon does not apply to censures: Ayrinhac, *Legislation on the Sacraments,* p. 248. It is for the proponents of this stricter view to explain the meaning of "quoquo modo": it may mean, we suppose, "in synod or out of synod" or "whether the episcopal power is delegated to others or not delegated" as in §2 of the canon.

No conclusive argument can be drawn from the chapter of the Code in which this canon is found, for the same canon 899, §2, in asserting the powers enjoyed by the canon penitentiary "ad normam can. 401, 1" (absolvendi etiam a peccatis et a censuris Episcopo reservatis), appears to deal with episcopally reserved censures as well as with sins.

Pending an official solution of this doubt, the opinion of Farrugia and others, if not correct, is at least solidly probable, and it may safely be followed, relying both on canon 209 and canon 2245, §4: "Censura latae sententiae non est reservata, nisi in lege vel praecepto id expresse dicatur; et in dubio sive iuris sive facti reservatio non urget."

### **458.**—Reconciliation in Danger of Death

*What is the procedure to be followed by a priest when called to a non-Catbolic who is in danger of death and wishes to become a Catholic?*

Instruction from Cardinal Vaughan, 8 May, 1902: . . . ab episcopis unanimis, in recenti suo Conventu, decisum est ut convertendorum Ecclesiae reconciliationem unusquisque Episcopus in propria sua dioecesi sibi reservaret. Quapropter, decisioni supradictae obtemperantes, praescribimus ut, quandocunque convertendus aliquis, exceptis iis qui in mortis articulo constituantur, Ecclesiae reconciliandus sit, facultas ad hoc a Nobis in scriptis petatur. . . .

Before 1902 it appears to have been the custom for priests to receive converts without any application to the local Ordinary, either because priests enjoyed delegated faculties habitually or because it was considered that the censure was not certainly incurred. In abolishing this practice the bishops in 1902 declared this case to be reserved. We arc all, however, familiar with the rule by which every reservation ceases in danger of death, and the Cardinal expressly referred to it in his instruction printed on p. 21 of the *Westminster Synod,* 1902, XLI; other bishops issued some equivalent instruction for their own priests, and, even though no express reference is

made to receiving converts in danger of death, it is certain that the reservation then ceases.

The priest who is called to a case of this kind will, according to the time at his disposal, instruct the candidate, administer conditional baptism unless the baptism received from a non-Catholic minister is deemed to be certainly valid, and in general observe the directions given in the *Ordo Administrandi,* as far as this is possible. The person being now a Catholic should receive the sacraments as administered to all Catholics. Afterwards the Ordinary must be informed and the usual signed declaration enclosed.

In the above instruction the phrase "in articulo mortis" is used, but it appears to have, in this context, a meaning identical with "in periculo mortis", and is so interpreted by the *Middlesbrough Statutes* n. 98.

## 459.—Reserved Case of Abortion

*The diocesan "pagella" states that the priest may not absolve the irregularity arising from abortion, but nothing is stated about the censure incurred by that crime. May one conclude that the censure is not reserved?*

Canon 985 : Sunt irregulares ex delicto: 4. Qui voluntarium homicidium perpetrarunt aut fetus humani abortum procuraverunt, effectu secuto, omnesque coopérantes.

Canon 990, §r: Licet Ordinariis per se vel per alium suos subditos dispensare ab irregularitatibus omnibus ex delicto occulto provenientibus, ea excepta de qua in can. 985, n. 4, aliavc deducta ad forum iudicialc.

Canon 2550, §1 : Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae Ordinario reservatam. . . .

Though in the common law of the Code Ordinaries may not dispense from the irregularity, the formula of their quinquennial faculties often concedes a limited power to do so "ad hoc dumtaxat ut poenitens ordines iam susceptos sine infamiae vel scandali periculo exercere queat"; the faculty may be subdclegatcd to the vicars forane and to certain other confessors. The phrase in the *pagella* received by a simple confessor is meant as a reminder that he has no powers over this case: from canon 990, §2, it is clear that the simple confessor enjoys a limited power over other irregularities *ex delicto* in occult and urgent cases. But even though the *pagella* contained no reference to the confessor's lack of jurisdiction, it is certain that he enjoys none over this case; what the common law denies even to Ordinaries must *a fortiori* be denied to priests unless they obtain special faculties.

In the common law the censure attached to this crime is reserved to the Ordinary, who may delegate jurisdiction to confessors or not delegate it according to his discretion. The formula used in many dioceses is to the effect that the confessor is empowered to absolve from all censures reserved to the Ordinary, with the exception of a certain number of cases enumerated by name. If the censure of canon 2350, §1, is not listed amongst these exceptions, it will follow that the confessor has delegated jurisdiction. But even though the *pagella* contains no reference whatever to censures reserved

to the Ordinary, and gives no list of exceptions, it is certain that the confessor enjoys no jurisdiction over these cases in the common law, save only in the circumstances of canon 2254.

The list of cases over which the confessor has no jurisdiction is often printed in the *pagella* as an aid to the confessor's memory; if it is not printed the confessor must discover from the Code and the commentators the cases which he cannot absolve.

**460.**—Marriage in Protestant Church

JP7a 7/ *penalties, if any, are incurred by a Catholic man who gives away his daughter, also a Catholic, in her attempted marriage before a Protestant minister?*

Canon 2251: Si plures ad delictum perpetrandum concurrerint, licet unus tantum in lege nominetur, ii quoque de quibus in can. 2209, §§1-5, tenentur, nisi lex aliud expresse caverit, eadem poena; ceteri vero non item, sed alia iusta poena pro prudenti Superioris arbitrio puniendi sunt. . . .

Canon 2209, §3: Non solum mandans qui est principalis delicti auctor, sed etiam qui ad delicti consummationem inducunt vel in hanc quoque modo concurrunt, non minorem, ceteris paribus, imputabilitatem contrahunt, quam ipse delicti executor, si delictum sine eorum opera commissum non fuisset.

Canon 2316: Qui . . . communicat in divinis cum haereticis contra praescriptum can. 258, suspectus de hacresi est.

The censure of canon 2519, §1, 1, is incurred by those who contract mixed marriage before a non-Catholic minister contrary to the law of canon 1063, §1. Cf. *The Sacraments,* Q. 542, for the exact nature of the action punishable under this canon. The censure is incurred by the woman in the above case, assuming that her action is that which is described in the law, and that she is not excused by any of the reasons given in canon 2229.

It is not incurred by the father unless it can be demonstrated that he was responsible for his daughter's act, either by command or by giving assistance without which the act would not have been committed; neither of these points seems to be verified in the above case.

He could be regarded, not unjustly, as being suspected of heresy from canon 2316. But seeing that an active part at a Protestant wedding is often regarded, especially in this country, as a civil rather than a religious act; and seeing that, in principle, a mild interpretation is to be given to the incurring of penalties, from canon 2219, §i, we think that no useful purpose would be served by trying to press this point to the rigid conclusions of canon 2315, which provides that one suspected of heresy incurs the censure attached to heresy unless he purges himself of the suspicion.

The man's condition, therefore, is that of one who has caused grave scandal by assisting actively at the attempted marriage of his daughter. He must repent of what he has done and remove the scandal; unless the local law requires some express reparation from the delinquent, it will suffice for the reparation of scandal if he allows it to be publicly known that he has repented and has been absolved from his sin.

## 461.—Penalty for Civil Marriage

*The marriage of two Catholics, attempted in a register office, is to be revalidated, but the Ordinary forbids a nuptial Mass. Is this a recognised canonical penalty?*

Canon 1137: Matrimonium nullum ob defectum formae, ut validum fiat, contrahi denuo debet legitima forma.

Canon iroi, §1: Parochus curet ut sponsi benedictionem sollemnem accipiant, quae dari eis potest etiam postquam diu vixerint in matrimonio, sed solum in Missa . . .

Canon 2291, 6: Poenae vindicativae quae omnes fideles pro delictorum gravitate afficere possunt sunt praesertim: . . . Privatio Sacramentalium . . .

*Bishops' Meeting,* 15 October, 1908; *Leeds Synods* (1911), p. 102: The bishops of England have agreed that the case of the re-marriage of persons who have gone through the form of marriage in a registry or non-Catholic place of worship be always referred to the bishop before rc-marriage, and his permission be obtained.

(i) In the common law, the revalidation of marriage according to the terms of canon 1137 is carried out like any other. There is no censure attached to attempted marriage in a register office, though *infamia facti* (canon 2295, §3) might follow cohabitation; the nuptial blessing which is the normal accompaniment of marriage in a Catholic church is not a reward for a virtuous life in the past but a blessing for the future. Except by induit, which we enjoy in this country, the nuptial blessing may be given only during Mass; but persons are not bound to use the induit, if they prefer, as they should be urged to do, to have a nuptial Mass.[1]

(ii) By local law in England, permission to revalidate any marriage must be obtained from the local Ordinary, who may or may not attach conditions beyond those of the common law. In some dioceses, the Ordinary requires the revalidation to take place in the sacristy, and if the induit for a nuptial blessing *extra missam* is being used this may likewise be given in the sacristy. May a nuptial Mass be celebrated in the church following upon this revalidated marriage in the sacristy? Our opinion is that it should not, except with permission from the Ordinary, on the principle *accessorium sequitur principale.* The Ordinary is within his right in directing such marriages to be in the sacristy, the reason being, no doubt, avoidance of scandal: in the local conditions it is considered unfitting, and against the common good, for persons who have affronted the Church by contracting a civil marriage to be treated subsequently like other Catholics getting married. This exercise of a bishop's right in denying the full marriage ceremonies seems to us to be, or at least to have some analogy with, the infliction of a vindictive penalty as provided for in canon 2291. It may be noted in canon 2271 that, in cases of local general interdict, marriages may take place but may not be accompanied by the nuptial blessing. If it is thought, in any given instance, that the Ordinary's directions arc harshly incident, the remedy is to explain fully the situation and seek from him a relaxation of the penalty. Cf. *Ecclesiastical Review,* 1947, CXVII, p. 387.

[1] *Tbf Clergy Review,* 1942, XXII, p. 424; Q· 52'·

### 462.—Irregularity Before Age of Puberty

*Does the irregularity of canon* 985.1 *afect a boy who, after baptism and adherence to an heretical sect, was reconciled to the Church at the age of twelve together with the other members of his family?*

Canon 15 : Leges etiam irritantes et inhabilitantes in dubio iuris non urgent; in dubio autem facti potest Ordinarius dispensare, dummodo agatur de legibus in quibus Romanus Pontifex dispensare solet.

Canon 985.1 : Sunt irregulares cx delicto: 1. Apostatae a fide, haeretici, schismatici.

Canon 988: Ignorantia irregularitatum ... ab eisdem non excusat.

Canon 2200, §2: Posita externa legis violatione, dolus in foro externo praesumitur, donec contarium probetur.

Canon 2250: Impuberes excusantur a poenis latae sententiae, et potius punitionibus educativis quam censuris aliisve poenis gravioribus vindicativis corrigantur . . .

Notwithstanding certain general principies which might, perhaps, argue to the contrary, it is the established rule to seek dispensation from the irregularity arising from heresy even when good faith excuses from the formal sin; in the external forum guilt is presumed from canon 2200, §2. But there is some reason for doubting whether this applies to a boy who has not reached the age of fourteen. Though capable of committing a *delictum* after reaching the age of reason, the law treats him with leniency, excusing him in canon 2230 from incurring such penalties as censures. The irregularity of heresy is not, indeed, a censure, but the basis of both is a "delictum", and it could be held that impuberty should excuse from both. In the pre-Codc law this point was in dispute,[1] and post-Codc authors teach that it is still doubtful whether this irregularity is incurred before the age of puberty.[2] We think that the correct solution is to seek a dispensation *ad cautelam,* which, from canon 15, can be given by the Ordinary.

### 463.—Theatre Suspension

*What value is there in the following interpretations of the law in IV Westminster Council, xi,* 9: (1) *It has ceased, like any positive law may cease, by custom or by the cessation of its end, as the law in n.* 11 *against dances for charitable purposes has ceased. Moreover, no positive law binds "sub gravi incommodo". (2) The law, assuming it has not ceased, is binding as a provincial law on the subjects of each province. It does not bind travellers in England outside of their own provinces.*

(i) There arc obvious difficulties concerning the interpretation of the law, not only in England but in every place, e.g. Ireland, Malines, Paris, where similar laws arc in force. But we have never heard the view that it has ceased whether by custom, or because it is a *grave incommodum* or for any other similar reason. There is no parity with the example cited, since any priest who reads his faculties *pagella* will find a reference to the law therein.

[1] Cf. Gaspard, *De Sacra Ordinatione,* §202.
[1] Gippcllo, *De Sacra Ordinatione,* §501; Bouscaren-Ellis, *Canon Law,* p. 576.

(ii) If it is assumed that the laws of the old Westminster synods are now binding merely as provincial laws for each of the four new provinces, we have to answer the question whether a *peregrinas* is bound by the theatre law and its accompanying suspension. There is room for two opinions. In our view a *peregrinas* is subject to this law, even when outside his own province, from canon 14, §1, n. *2:* "*Peregrini* non adstringuntur . . . legibus territorii in quo versantur, iis exceptis quae ordini publico consulunt. . . ." That the theatre suspension is a law affecting public order seems to us fairly certain. Cf. Teodori in *Apollinaris,* 1931, p. 141, arguing that an Italian priest visiting Paris is liable to the censure in that place.

But the assumption that the law is merely a provincial one appears to be erroneous from a letter sent by Cardinal de Lai, secretary of the Consistorial Congregation, to a query dated 12 September, 1918. It was printed in full in *The Clergy Review,* 1952, HI, p. 224: "Concilia Provincialia Westmonastericnsia . . . subsistent, donec novae provinciae novum Concilium, in quo modificentur praescripta antiquorum, celebraverint: et cum subsistant, perdurant in illa forma et extensione quas a principio habuerunt. Quapropter, in exemplo ab Amplitudine Tua allato, sacerdos unius provinciae qui contra praescriptum Concilii Westmonasteriensis, deer, xxiv, N. 2, theatro in alia intersit, subjicitur, ut antea, 'poenae suspensionis ipso facto incurrendae, hactenus ubique in Anglia vigenti, cum reservatione rcspectivo Ordinario'."

*Could one's Ordinary properly, and with some chance of success, be requested to dispense from the observance of the theatre law in an individual case?*

Canon 82: Episcopi aliique locorum Ordinarii dispensare valent in legibus dioccesanis, et in legibus Concilii provincialis ac plenarii ad normam can. 291, §2, non vero in legibus quas speciatim tulerit Romanus Pontifex pro illo peculiari territorio, nisi ad normam can. 81.

Canon 291, §2: Decreta Concilii plenarii et provincialis promulgata obligant in suo cuiusque territorio universo, nec Ordinarii locorum ab iisdem dispensare possunt, nisi in casibus particularibus et iusta de causa.

A discussion about the origin and force of the law in IV *Westm.,* xi, 9, may be seen in *The Clergy Review,* 1932, III, pp. 89 and 220.

It is within the competence of each local Ordinary to interpret the law in individual cases, but not to give an authentic interpretation *ad modum legis,* as explained by Van Hove, *De Regibus,* p. 253, n. 4. For the power to give an interpretation for an individual case is necessarily contained within that of dispensing in an individual case. Provided, therefore, one has a just cause, a petition for an interpretation or for a dispensation may properly be addressed to the competent Ordinary.

*Does an English priest, staying for a few days in Brussels, incur the censure in force there attached to visiting a theatre, if he is ignorant of this local law and penalty?*

Canon 14, §1: Peregrini: t. Non adstringuntur legibus particularibus sui territorii quandiu ab eo absunt, nisi aut carum transgressio in proprio territorio noceat, aut leges sint personales.

2. Neque legibus territorii in quo versantur, iis exceptis quae ordini publico consulunt, vel actuum sollemnia determinant.

Canon 140: Spectaculis, choreis et pompis quae eos dedecent, vel quibus clericos intéressé scandalo sit, praesertim in publicis theatris, ne intersint.

*Malines, Cone. Prov.,* 1937, V, n. 176: Sub gravi praecepto omnibus ac singulis clericis et religiosis, non exceptis peregrinis, prohibetur ne in publico theatro spectaculis, choreis, aliisve pompis intersint. ... Si quis clericus aut religiosus, in maioribus ordinibus constitutus, graves illas prohibitiones transgreditur, ipso facto suspensionem a divinis, Ordinario loci reservatam, incurrit.

Canon 2229, §3, 1: Ignorantia legis aut etiam solius poenae, si fuerit crassa vel supina, a nulla poena latae sententiae eximit; si non fuerit crassa vel supina, excusat a medicinalibus, non autem a vindicativis latae sententiae poenis.

(i) In many parts of Europe there exists a local law, resembling that of the Westminster provincial councils, strengthening under censure the common law of canon 140, which carries no censure. There can be no doubt whatever that local Ordinaries are within their rights in defining more closely tbe terms of canon 140, and in attaching a censure to the violation of the law. It is also open to any local Ordinary to declare that his law and censure affect not only his own subjects but all clerical visitors (peregrini) in his territory; he may do this by deciding that the law affects public order, as in canon 14, §1, 2. Sometimes it is not very clear whether a law of this kind affects visitors, in which case they may, whilst observing the terms of canon 140, take advantage of the doubt and consider themselves not bound by the purely local regulation; in these circumstances an English priest is neither liable to the Westminster censure, from canon 14, §1.1, nor to the local censure, from §1, 2 of the same canon.

The usual interpretation is that laws of this kind do always, of their nature, affect public order, and therefore are binding upon visitors, an interpretation which is confirmed by *S.C. Cone.,* 1 July, 1926. Bur it is clearer and simpler for the local authority to state explicitly that the law binds visitors, as is done by the Malines Council quoted above.

(ii) Λ visiting priest could easily be guiltless of crass ignorance in not knowing of the local censure, even though he may have been conscious of breaking the law of canon 140. He is then entitled, as regards the internal forum of conscience, to hold that he has not incurred the censure. The authority of the external forum, however, may take the opposite view, and regard him as suspended in that territory until he is absolved from the censure, and his only remedy is to prove, to the satisfaction of the external forum, that he has not incurred a censure.[1]

**464.—** Confirmation: Privation Penalty

*Does the penalty of privation, incurred "ipso facto" by a priest who exceeds tbe limits of the privilege, apply equally to clauses "ad validitatem" and "ad liceitatem"?*

*S.C. Sacram.,* 14 September, 1946: Si huiusmodi mandati limites iidem ministri praetergrediantur, probe sciant sc perperam agere et sacramentum nullum conficere, incolumi praeterea manente statuto canonis 2365.

1 Cf. *Apollinaris,* 1931, VI, p. 139.

Canon 2219, §1: In poenis benignior est interpretatio facienda.

Canon 2365 : Presbyter qui nec a iurc nec ex Romani Pontificis concessione facultatem habens sacramentum confirmationis ministrare ausus fuerit, suspendatur; si vero facultatis sibi factae limites praetergredi praesumpserit, eadem facultate eo ipso privatus exsistat. (Cf. canon 78.)

Since there is at present some dispute whether n. 3 of the recent decree pertains to the validity of the act,[1] an answer to the above question must be of a provisional nature; moreover, the details of the law on penalties and their absolution is extremely complex. Many of the commentators give no explanation of canon 2365, but the only one we can find declares this penalty to apply equally to exceeding the limits both of a lawful and of a valid administration of this sacrament by a priest: "Ut plurimum limitationes respicere solent valorem; quod vero attinet ad delictum et poenas, nihil interest utrum limitationes valorem vel solam afficiant liceitatem."[2] This interpretation is accepted by Canon Pistoni in his commentary on the 1946 decree,[3] but we think there is good ground for doubting its application to n. 3; for the reference to canon 2365 is found only in n. 2, together with a clear indication that n. 2 affects the validity of the act. If exceeding the limits of what is lawful entails the penalty of privation, the rule would have to be applied, we suppose, to such minor breaches of the law as, for example, administering the sacrament in the presence of heretics. Relying accordingly on canon 2219, §1, we think that a milder interpretation of canon 2365 should be accepted, and that the penalty of its second part should be restricted to exceeding the limits set out in n. 2 of the decree, and not to any other parts of it. This is the interpretation of a writer in *ÏAmi du Clergé,* 1947» P· 409·

The penalty of the first part of the canon applies to priests not included in the list given in η. i of the decree.

## §4- SUNDAY OBSERVANCE

### 465.—Mass in Semi-Public Oratory

*An institution for sick priests has a senii-pnblic oratory with a resident chaplain, and with the parish priest's consent the local Catholics assist at Mass therein on Sundays. Is the obligation fulfilled, by the local people as well as by the religious, when the Mass is being said, not by the chaplain, but by one of the sick priests?*

Canon 1249 : Legi de audiendo sacro satisfacit qui Missae adest quocunquc Catholico ritu celebretur, sub dio aut in quacunque ecclesia vel oratorio publico aut semi-publico et in privatis coemeteriorum aediculis de quibus in can. 1190, non vero in aliis oratoriis privatis, nisi hoc privilegium a Sede Apostolica concessum fuerit.

Canon 1188, §2: Est vero oratorium semi-publicum, si in commodum

[1] Cf. *Tbe Clergy Review,* 1947, XXVIII, pp. 42 and 336.
[2] W'cmz-Vidil. *Jus Canonicum,* VII, §501, b.
[3] *De Confirmatione a Ministro Extraordinario,* pp. 105 and 109.

alicuius communitatis vel coetus fidelium eo convenientium erectum sit, neque liberum cuique sit illud adire.

(i) The law which required the faithful to fulfil their Sunday and festal obligation in the parish church had fallen into disuse even in the time of Benedict XIV,[1] though there is still required a certain measure of publicity. But it is the *place* which the law defines, not the status of the celebrating priest. Therefore, just as the faithful fulfil their obligation in a parish church by assisting at the Mass of a visiting priest celebrated at a side altar, so may they also fulfil it by assisting at the Mass of any priest celebrated in a semi-public oratory, even though the priest has not obtained permission to celebrate therein. The obligation, therefore, of the religious in charge of the institution is clearly fulfilled by assisting at the Mass of a sick priest in their own oratory.

(ii) The same must be said of the local Catholics who frequent this oratory. Neither the parish priest, nor even the Ordinary, without an induit, may deprive the faithful of their right in the common law of canon 1249 to fulfil this obligation in a semi-public oratory.[2]

It is perfectly lawful, however, for the parish priest to persuade the people, in accordance with the terms of such canons as 467, §2, and 1546, §1, to be present at Mass in the parish church, particularly when it is remembered that the parish priest will normally be saying Mass "pro populo" on these days.

Also, with perfect propriety, the superior of the religious house may be persuaded, if the oratory is not "public", to refuse admittance to the faithful on days of obligation, for it is essential to the character of a semi-public oratory that the faithful from outside have no right of entry. The superior is entitled to refuse them admittance and could, for proper reasons, be urged to withhold the necessary permission.

### 466.—Mass in Ship's Oratory

*Are the faithful on board a liner bound "sub gravi" to assist at Mass (f) if it is celebrated by the official chaplain in the permanent chapel of the ship; (ii) if it is celebrated in a room by a priest enjoying a portable altar privilege for the period of the voyage?*

Canon 1249: Legi de audiendo Sacro satisfacit qui Missae adest quocunque catholico ritu celebretur, sub dio aut in quacunque ecclesia vel oratorio publico aut semi-publico et in privatis coemeteriorum aediculis de quibus in can. 1190, non vero in aliis oratoriis privatis, nisi hoc privilegium a Sede Apostolica concessum fuerit.

Code Index, s.v. Missa—auditio: . . . cui praecepto satisfaciunt Missam audiendo quocunque ritu ea celebretur et ubivis, exceptis oratoriis privatis.

T.R.C., 4 March, 1901, n. 4069, ad 5: Utrum Cappcllae navium aut Altaria in ipsis navibus erecta pro Sacro litando debeant considerari ut Oratoria privata vel publica? *Rjesp.* Si Cappella locum fixum habeat in navi, uti publica habenda est: secus neque publica est neque privata, sed habetur ut Altare portatile.*

[1] *Synod Dioces.,* XI, cap. xiv, n. 10.
* Cf. Mostaza in *Periodira,* 193J, XXII, p. 141.

The point under discussion is the positive ecclesiastical law, for since this law requires a Mass of obligation to be heard "in loco debito", there can be no legal obligation to assist at a Mass which is not "in loco debito": it is admitted, nevertheless, that for the purpose of avoiding scandal one might be bound, even *sub gravi,* to assist at a Mass which did not fulfil the ecclesiastical precept, but with this aspect we arc not at the moment concerned.

(i) Once it is granted that the Mass is celebrated "in loco debito" (i.e. practically anywhere, including the open air, except in a private oratory), it will follow that the faithful are bound *sub gravi* to be present. Hence, from *S.R.C.,* n. 4069, the answer to the first part of the query is certain, for the ship's permanent chapel is declared to be a public oratory.

(ii) The answer to the second query is by no means certain. For, on the one hand, the personal portable altar privilege is, in many respects, the equivalent of a private oratory, which is definitely excluded in canon 1249 as "locus debitus" for satisfying the precept, except only for those named in the induit.[1]

On the other hand, the same canon, and particularly the Code index thereto (ubivis), seems to give a local meaning to the term "private oratory", distinguishing this from every other place, including the open air, in which Mass is celebrated with some measure of publicity. It was for this reason that, in answering a question about attending a military Mass,[2] it was decided that civilians could satisfy their obligation thereat, unless the chaplain's faculty expressly excluded them.

Therefore, whilst not denying some external probability to the opposite view, we think that if the room in a ship, c.g. the saloon or the library, at the disposal of a priest with a portable altar is open to the public, all the faithful on the ship may satisfy the precept therein, and all arc accordingly bound to do so. Cf. *Periodica,* 1930, XIX, p. 124; 1945, XXXIV, p. 42; Vermeersch-Crcusen, *Epitome,* II, §563.

### 467.—Servile Work: Profit Motive

*Is there any basisfor the view that workingforprofit has a relevance in determining what kind oflabour isforbidden by the lawl*

(i) In interpreting the law as it exists at the moment one must examine the *finis operis,* not the *finis operantis,* but there is this basis of relevance in regarding the profit motive: the type of work which is forbidden is largely determined by customary interpretation, and popular judgement may often decide, especially on the fringes of the law, that a certain occupation is servile when done for profit but not otherwise. "Observantia diei dominicae in nova lege succedit observantiae sabbati, non ex vi praecepti legis, sed ex corstitutionc ecclesiae et ex consuetudine populi Christianae."[3]

The conviction that certain occupations were wrong on Sunday arose spontaneously from a deep Christian instinct; a moral obligation in the matter was recognized long before a legal obligation was established. The

[1] *Tbe Sacraments** Q. 9J.

[2] Ibid., Q. 24».

[3] *Summa Thio!..* II–II, 122, 4, ad 4.

Christian custom was sanctioned and explained by conciliar decrees, and interpreted by theologians and canonists, but there is little doubt that a correct observance of the law, even at the present day, must depend very largely on the accepted custom of localities. We can never afford to lose sight of this important element in coming to a judgement concerning servile work. The custom permitting certain kinds of servile work, e.g. cooking and other domestic labour, is universal. But the lawfulness of other occupations differs widely in various localities, and the Code expressly allows for this customary element in determining the lawfulness of public markets and trading. "Festis de praecepto diebus missa audienda est; et abstinendum ab operibus servilibus, actibus forensibus, itemque, *nisi aliud ferant legitimae consuetudines* aut particularia indulta, publico mercatu, nundinis, aliisque publicis emptionibus et venditionibus."[1] The customary principle of interpretation is applied by the Code to public trading, and it would seem that a similar principle should sometimes be used in deciding whether a given occupation, of its nature servile, is to be permitted or not.

(ii) Servile work is that which is done principally by bodily labour with a view to some utility of the body, and is the kind of work that used to be done by slaves in the past. Liberal work, on the other hand, is that in which the mind principally operates with a view to mental culture and development, and is the kind of work considered proper to free men in the past.

The origin of this classical distinction can easily be understood. It can also be perceived that servile work is, of its nature, more opposed to the sanctification of Sunday, in its complete religious, human and social significance, than is liberal work. But, in these days, the distinction gives rise to some misgiving and confusion, for the difference between a slave and a free man is in no sense the difference between a wage-earning servant and an employer. The wage-earner is not excluded from earning money by a liberal occupation, nor does an employer think it beneath his dignity to engage in bodily labour. The fairly common popular view is that what the Church forbids on Sunday is earning money from one's usual occupation. This view is not correct, of course, although it has not been without adherents among both ancient and modern theologians.[2] But it cannot be denied that the opinion is gaining ground that this is what the Church ought to forbid. Bearing in mind the force of custom, in the genesis and interpretation of the law, this view cannot lightly be rejected, and some hold that we arc on the eve of a change of discipline in this respect.[3] It has also been pointed out that the law is often wrongly incident, since it appears to operate against the financial interests of the manual labourer and favour the more cultured classes, painters, writers, musicians.

The only adequate answer to these objections is that we arc not concerned with what the law ought to be, but with what it actually is at the moment. Every law made for the common good is often wrongly incident. A diocesan law which, for good local reasons, refuses to consider a mixed marriage dispensation, except in well-defined cases of the utmost urgency, may be wrongly incident on those who cannot afford to move into a diocese which, for good local reasons, is less strict about the matter. The law, as

1 Canon 1248.
3 Dignant. /> P7/7//fe *Religioni*^ p. 162.
'/'/W *du Ckrgt*9 1909» P* I5· !912· P· 32°·

wc have it, is universally understood to mean that servile work is forbidden, but not liberal work, and the matter is to be regarded from the nature of the work, not from the motive of the agent. If a given type of labour is clearly servile and prohibited, for example, breaking stones, the intention of the worker does not make it liberal and permitted, whether the motive is recreation, reducing weight, financial gain, Christian mortification, or any other reason. Similarly, if a given occupation is clearly *liberal andpermitted,* it docs not become *servile andprohibited* owing to the fact that it is a means of livelihood or because it causes intense fatigue. This is the common interpretation, as well as the obvious meaning of the law, and the reason why servile work is prohibited is because, taking the generality of people into account, it is destructive of the purpose of Sunday observance, in all its religious and social aspects.

Liberal work is also liable to prevent the due service of God, but it is exercised by fewer people, with less publicity and social disturbance, and it does not appear to be so obviously opposed to the other subordinate purposes of the law. Writing a book may so engage the whole energy and mind of the author every Sunday that it may, perhaps, be questioned whether he is offending against the virtue of religion. Whatever the decision may be, he cannot be accused of breaking the negative precept forbidding servile work.

Until a change of discipline, foreseen by some writers, is introduced, the classical distinction between servile and liberal work is most certainly to be regarded as vital to a correct understanding of the law, even though it is open to certain obvious objections and is a fertile ground for the worst sort of casuistry. But this distinction, taken by itself, is not altogether adequate. It needs to be interpreted, especially in cases which arc doubtfully servile, by the same good sound Christian custom which was responsible for the genesis of the law.

(iii) It seems, for example, that the theologians have dwelt a little too fondly on the notion that working for profit has really nothing to do with the question. This criterion had quite a lot to do with it in the teaching of the Summists from the thirteenth to the fourteenth century, although the common teaching, since that period, has gradually adopted the doctrine of Cajetan and regarded uniquely the *finis operis* of the work.[1] Yet the popular judgement has never ceased to take into account the clement of working for a salary, in determining the lawfulness of certain types of work, and it is supported by the great authority of Benedict XIV, with regard to one occupation at least.[2]

The complete definition, therefore, of forbidden work should be expressed, perhaps, somewhat like this: wc arc bound to abstain from those servile works which, in the sound judgement and custom of Christians, are opposed to the purpose of the precept, which is to secure a weekly rest in order better to serve God.[3] How arc we to discover this custom? In some instances it is universal throughout the Church, e.g. travelling (which involves co-operating in the servile work of others), preparing food, and domestic work. We allow these, and similar occupations, without unduly

[1] *Diet. Tbéol.,* IV, cols. 1320, 1322, 1323.

[2] "Inter open servilia piscatio quoque recensenda est quoticscunquc ad lucrum exerceatur", *Synod Dioeces.* XIII, c. 18, n. 10.

[3] *CS.l'Ami du Clergé,* 1913, p. 219; 1923, p. 371; 1929, p. 74.

searching for an excusing cause. In other cases local customs will diifcr, and they may not only be tolerated, but encouraged, if they have the approval of a good, religiously educated, Catholic community. There arc parts of Europe where knitting and crochet work, not done for profit, is approved; and there are other parts of Europe where artistic embroidery, done for profit, is disapproved.[1]

## 463.—Permitted Servile Work

*To what extent may servile work be permitted on Sunday, apart from the kind of necessity justifying it in the case of persons whose livelihood depends upon doing servile workl*

(i) One must bear in mind always that this law does permit smallness of matter, in which case servile work is indeed forbidden, but if grave sin is not committed our attitude towards breaches of the law must be the same as our attitude towards any other venial sin.

In attempting to define more exactly a grave breach of this law, the older authors varied considerably in determining the time clement, some allowing as much as eight hours, others as little as one hour. In all questions of this quasi-mathematical character the opinion of St Alphonsus is most authoritative, and the modern authors commonly follow him in assigning two or three hours of servile work as grave matter, from the point of view of duration,[2] a number of shorter periods being taken as coalescing matter, in much the same way as the doctrine about small thefts. Also, an even longer period may excuse from grave sin, if the work is not very laborious. Bearing in mind, however, the force of custom in interpreting the law, a shorter or longer period may be reckoned as grave matter in a given type of work; in which case the customary interpretation is certainly to be followed.[3]

(ii) If the reasons are examined which excuse one from observing this law, it is always on the understanding that servile work is never permitted beyond the point which the excusing cause appears to justify, and always with due regard for avoiding scandal.

(λ) Since the service of God is the dominant purpose of the whole law, it is apparent that any servile work immediately connected with Divine worship is not forbidden, for example, organ-blowing and the stoking of heating apparatus.

*(b)* St Thomas, in a very illuminating text, after distinguishing between the service of sin, the service of man and the service of God, quotes the teaching of St Augustine to the effect that a Jew would do better by working in the fields on the sabbath than by stirring up sedition, and that their wives would do better by making woollen garments than by spending the day in lewd dancing.[4]

[1] *Collât. Brugcn.,* 1926, p. 75.
[2] *Tbeol. Moral.,* Ill, n. 30J ; Gaudé, I, p. 567.
[3] *Coital. Brugen.,* 1926, p. 69.
[4] ". . . magis homo impeditur a rebus divinis per opus peccati, quam per opus licitum, quamvis sit corporale; ideo magis contra hoc prcccptum agit (i.e. de sanctificatione sabbati), 3ui peccat in dic festo, quam qui aliud corporale opus licitum facit; unde Augustinus icit in lib. dc Dcccm chordis (cap. 5) "melius faceret Judaeus in agro suo aliquid utile quam si in theatro seditiosus existeret, et melius focminac eorum dic sabbati lanam facerent quam quod tOU dic in neomeniis suis impudice saltarent". 11-11, 122, 4, ad 5.

This very sound doctrine may be applied, where necessary, to certain cases. Idleness and loafing is the commonest occasion of sin, especially for young people who, unfortunately, may have a decided nausea for liberal pursuits. They need something to keep them out of mischief and may have no opportunity for sports and games. It would seem, therefore, to be in accordance with the mind of St Thomas that, in the case of people who are liable to commit sin through having nothing more attractive to do, some kind of occupation may be permitted them, even though it is technically servile and forbidden, provided there is no scandal. In modern times there is every reason for a literal application of St Augustine's text. Unsavoury films and plays, dance halls of dubious character, and various dangerous amusements, attract old and young. Their excuse is that they have nothing else to do.

Needless to add, the doctrine cannot be invoked unless there is danger of sin for the individual concerned. For this reason it is better to establish the lawfulness of occupations, like knitting, on a basis of custom, thus eliminating the necessity of seeking a proportionately grave cause in order to justify it. The excellent person who has a scrupulous conscience about knitting probably never commits what a theologian would call grave sin from one year's end to the other. If knitting is allowed them on the supposition that otherwise there will be an outbreak of sin, it is an assumption quite unwarranted by the facts.[1]

(«·) The service of God, above all the love of God, is intimately connected with love of one's neighbour. Servile work is lawful on Sunday if done on a motive of charity, for the purpose, namely, of assisting poor persons in doing the work necessary for the relief of their personal wants, e.g. assisting them in mending garments. There is agreement on this point amongst the authors, but some also teach that it is lawful to do servile work, the proceeds of which are to be given to the poor, even though the work is not immediately concerned with their relief. Without denying extrinsic probability to this view, it is difficult to defend it without sacrificing the principle which defines servile work according to the *finis operis* not the *finis operantis.* In doing work which is immediately and of its nature charitable relief the *finis operis* is charity, whereas, in the opinion we are criticizing, the *finis operantis* alone is charity.

(</) Since the sixteenth century it has been commonly admitted that the public services of transport, navigation, posts, etc., are not to be interrupted by the Sunday observance. The reason is generally found in the notion that the law is not meant to bind with a *grave incommodum publicumy* but a truer reason, perhaps, is to be sought in the customary interpretation of the law which has been explained in Q. 467.

(r) With the same unanimity it is admitted that those persons arc excused whose livelihood requires them to do servile work on Sunday. In this, and similar cases, the principle that the Church docs not wish the law to bind *sub gravi incommodo* has always been liberally interpreted.

[1] Cf. Q. 469.

## 469.—Is Knitting Servile Work?

*Is there any modification at the present time in what used to be the accepted opinion that knitting is servile work and therefore prohibited on Sundays? Though relatively speaking a trifling matter, people like to know exactly what the law is, and some explanation seems necessary.*

Apart from canon 1248, which includes servile works amongst occupations forbidden on Sundays, the law is reticent on the subject, and the canonists commenting on this canon find it more convenient to refer readers to the teaching of the moralists. We will assume that some excellent law-abiding girl likes knitting as a useful pastime, and being perhaps of a scrupulous turn of mind asks a confessor whether she is doing wrong; the confessor hedges a bit, but will usually give a decision that in all likelihood, in this instance at least, knitting is permissible. There are two ways of justifying his decision:

(i) The traditional way as set out by the manualists presupposes that knitting is in itself prohibited servile work, since it is bodily rather than mental labour and is directed towards bodily rather than mental utility. Priimmcr, more successfully than most of the writers, suggests the criterion for distinguishing the knitting or other needlework which must be called servile from that which is liberal: "Illa opera manualia mulierum, quae ope quoque machinae (licet non ita perfecto modo) perfici possunt, habentur tanquam opera mechanica et servilia, ut nere, suere, texere etc.; illa autem opera, quae necessarie sunt manufacta, possunt considerari ut liberalia."

Priimmcr, as do all the manualists, then refers us to a later section which shows that even this servile kind of knitting may be permitted for appropriate reasons. If the confessor is a parish priest, his decision may be the equivalent of a dispensation as permitted in canon 1245, §r ; if not a parish priest, it is sanctioning the penitent's use of *epikeia.*

There is quite a lot to be said for this method: it is comparatively easy to understand; it is the tradition of the manualists in common use; it preserves the law in principle whilst permitting its non-observance. The objections arc that it encourages formalism in Sunday observance; that the reasons justifying dispensation or *epiksia* are often extremely difficult to discern, and are introduced mechanically and unreflectingly as a legalistic device for avoiding an awkward situation; and that it is bad for Christian discipline to have laws which are so easily disregarded, giving the impression that ecclesiastical authority takes a tiling away with one hand and gives it back with the other.

(ii) A more recent solution suggested by some writers is based on a wider, though not necessarily a laxer, definition of prohibited servile work, which requires not only the elements usually associated with it but, in addition, the common Christian judgement of the locality, chiefly a matter of custom, that the occupation is opposed to the purpose of the precept, which is to secure a weekly rest principally in order to serve God better. This concept does, indeed, trespass on the axiom *finis precepti non cadit sub precepto,* and the customary interpretation is quite often influenced by considering whether the work is being done for gain or not; both of these aspects are disregarded

in the traditional view, and it may well be that the new outlook will create more difficulties than it solves.

An explanation of this view is in Q. 467, and a wider treatment of the subject was given by Dr L. L. McReavy in *The Clergy Review,* 1935, IX, pp. 269 and 453. One can discern in the modern manuahsts a growing emphasis on custom as the interpreter of this law, e.g. Wouters, *Theol. Moralis,* I, §705 ; and the question whether the work is being done for financial profit is again finding favour, at least as a criterion for doubtfully servile work, e.g. Acrtnys-Damcn, *Theol. Moralis,* I, §507.

If this approach to the subject is accepted, the decision can easily be given that knitting as a pastime is not servile work, and there will then be no occasion for a dispensation or for *epikeia.* If it is not accepted, we think that, even on the traditional lines of approach, the knitting problem will solve itself in course of time: its sanction by dispensation or *epikeia* will become so common and universal that the writers will declare it to be servile work indeed, but justified by custom. Cf. *TAmi du Clergé,* 1946, p. 156.

### 470.— Sunday Amusements

*It seems that Sunday is profaned more by excessive amusement than by servile work. Are there any restrictions, in the laws of the Church, on the amusements permitted?*

The Church, having in mind the sanctification of Sunday, forbids certain occupations (canon 1248) which, for the majority of people, are liable to withhold their minds from the service of God. There are other reasons for the law which, while secondary, are closely connected with this purpose: to protect the labourer from becoming a beast of burden; to give some opportunity for the quiet enjoyment of family life; to secure a period, not only for rest and recreation, but for the higher mental activities proper to the dignity of human beings. The law of the Church has all these purposes in view, but they are subordinated to the chief purpose of sanctifying one day in the week by devoting it to the service of God.

It is essential to consider this purpose in order that a judgement concerning forbidden occupations may be given with some sense of proportion; but we must not be unmindful of the axiom *finis precepti non cadit sub praecepto.* The law forbids servile work *sub praecepto.* A person who abstains from servile work keeps the law even though he may ofiend against the virtue of religion in other ways. But there is considerable danger that the conscience of the faithful may become somewhat pharisaical on the point, with the result that while keeping the letter of the law which forbids servile work, they fail to sanctify Sunday by spending their time in other occupations which are completely at variance with the whole spirit of the law. It is a point which confessors should remember, when assisting penitents to solve doubts of conscience arising from that aspect of Sunday observance which is concerned solely with avoiding servile work.

If the dominant purpose of the law is kept in mind, we can readily perceive that its subordinate purposes, for example, amusement and recreation, arc liable to be exaggerated. Two instances may be cited of episcopal

prohibition of activities, which arc clearly not servile, but which tend to frustrate the chief purpose of the law.

The first is contained in a collective pastoral letter issued 21 November, 1927, and signed by the seventeen bishops of the provinces of Quebec, Aiontrcal and Ottawa. It protests against the profanation of Sunday by devoting the day to pleasures and amusements, even those of an otherwise harmless character, even those organized for charitable purposes, and it concludes: "By our authority and in conformity with Catholic tradition and our Conciliar laws, we remind all Catholics that they are under a grave obligation not to frequent places organized by commercial and financial interests, and we formally forbid the faithful of our dioceses to organize any amusement, for which entrance money is paid, even when the proceeds are to be devoted to religious and charitable works."1

The second instance is an instruction issued by the Bishop of Treves, telling the clergy to oppose all outdoor excursions, gymnastic fetes, and sporting events on Sunday morning. These practices are forbidden, not precisely because they result quite often in people missing Mass, but because the custom of hearing a hurried early Mass, or attending a crowded chapel in some pleasure resort, while fulfilling the precept of Sunday Mass, is not in keeping with a proper sanctification of the day.2

These two instances arc instructive, because the things forbidden do not come under the category of forbidden work; lucrative occupation is not; amusement and sport certainly are not. All Catholic colleges in this country encourage sports and games on Sunday. They are forbidden in the localities mentioned because the bishops, whose province it is to rule the Church of God, judge that these lawful pursuits are being abused to such an extent that the sanctification of the day is threatened, and the Christian conscience offended by these departures from good sound Catholic custom. But there exists no common law on the subject.

## §5. FASTING AND ABSTINENCE

### 471.—Fasting Too Strictly Interpreted

*May one observe the substance of the fasting laws even though more than two and eight ounces of food are taken at the subsidiary repasts?*

The law is now not observed by the generality of the faithful, a neglect which is due, in large measure, to the tact that the interpretation of the law has been made too rigid with regard to what is permitted at the subsidiary repasts. The responsibility for this may not be due to the theologians entirely but, whoever is responsible, the fact remains that the ordinary well-instructed Catholic understands that the subsidiary repasts must consist of two ounces of bread in the morning and eight ounces of light food in the evening. We find this rule set out rigidly in the Lenten instruction

1 *Documentation Catholique,* 1928, XIX, col. }6j.
2 *Op.cit.,* 1925, XIV» col. 916.

for English dioceses in 1904: "not exceeding eight ounces . . . not exceeding two ounces of bread". The majority of people, especially if they have some work to do, find the observance of this rule a moral impossibility, and if they take the trouble to consult a confessor, which they usually do not, they arc assured that the law is not for them.

A rigid absolute rule of so many ounces has the advantage of being plain and definite, and it is favoured by many of the writers because it is the amount determined by St Alphonsus, who himself interpreted the opinion current in his day and in his locality. It was a warm and sunny climate and the Roman ounce was twelve to the pound, not the modern avoirdupois ounce. Those who wish to keep the law, observing the "two and eight" rule, may do so. But we are entitled to ask why a law, which has been gradually mitigated throughout the centuries, should now be irrevocably fixed according to the lights of the eighteenth-century casuists.

Actually the rule concerning the subsidiary repasts is a flexible one, to the extent that it depends, as canon 1251 states, on local custom. It is also flexible, in the view of many, to the extent that it will vary with the individual in the same locality. The amount allowed is not absolute for all, but relative to the needs of the individual; a person of large stature and appetite obviously should not be rationed exactly in the same way as a small person of modest needs. Many of the older theologians, as Layman, admit this principle, and amongst the more recent writers there is a tendency to concede more than the Alphonsian rule, if it cannot be observed by an individual *sine notabili incommodo.* Of particular value is the teaching of Konings writing for the United States, where the conditions of life are much the same as in these islands: "Quantitas octo unciarum nemini deneganda, maior autem concedenda iis quibus haec non sufficeret. . . . Sane statui nequit regula omnino fixa, cum etiam ad complexionem, munera obeunda, durationem jejunii, etc., attendi debet: licet in genere sumere quantum necessarium quis ducit ad evitandam indispositionem, quae ipsum impediat, quominus officia sua convenienter obeat".1

A well-defined movement in Belgium to establish this relative standard amongst the faithful was sanctioned by the Fifth Provincial Council of Malines, 1957, n. 69: "Ubi speciatim de quantitate ciborum determinanda agitur, salva conditione unicae plenae comestionis, ratio haberi potest complexionis corporis, aetatis, occupationis personae ieiunantis. Generatim unicuique licebit tantam cibi quantitatem sumere quanta cuique necessaria est ad vitandam indispositionem quae ipsum impediat quominus officia status convenienter adimplere valeat." The conciliar decrees were approved in the normal way by Pius XI in 1938.

The beginnings of this movement cannot easily be fixed, but the earliest discussion known to the present writer was in *TAmi du Clergé,* 1921, pp. 593-602, an anonymous contribution evidently written by someone entitled to speak with authority. In 1924 FrCreusen, S.J., referred to the article as excellent and, although he was not dealing with this point, appeared to sanction the doctrine. In 1927 Canon Gougnard, the moral professor at Malines, studied the question in *Ephemerides Theologicae Tovanienses,* in which the general conclusions of the article in *ГAmi du Clergé* were approved and supported by other citations and references. In 1931 a writer in *Collationes*

1 *Tbtol. Moralis,* §j6j. Boston, 1874.

*Brugenses* arrived at the same conclusions, independently, so it would appear, of the previous authors mentioned. Discussing the meaning of "consuetudo" in canon 1251 he writes: "jam videtur in nostris regionibus quaedam consuetudo legitima exoriri, ex consensu saltem tacito Episcoporum, quae permittit ut fideles ieiunio adstricti quantitatem ciborum in frustulo ac collatione determinent, non necessario juxta antiquiorem normam absolutam 'tot unciarum', sed potius modo relativo et proportionate ad singulum individuum, sumendo quantum cuique neccsse videatur, 2d implenda sua munia modo consueto et normali ac sine nimia indispositione aut nimio incommodo, puta practice reducendo frustulum ad dimidiam partem, collationem vero ad tertiam partem consuetae quantitatis". In addition, he cites a Flemish pamphlet popularizing this doctrine, published with the approval of Cardinal Van Rocy and the Bishop of Bruges, which had the large circulation of 150,000.

An article on the subject in *The Clergy Review,* 9935> V, p. 125, was translated into French for *L,a Cité Chrétienne,* 5 March, 1935. In the same year an article by Dr Mulders favouring the new interpretation of the law appeared in *N.K.S.,* p. 267. An excellent summary of the literature may be seen in *Theological Studies, 1*946, p. 464.

The manualists, writing chiefly for young students, are properly conservative; they record the various opinions of their predecessors and rarely enter upon a venturesome flight of thought. The current (1947) Aertnys-Damen, I, p. 732, favourably summarizes the question, quoting the Fifth Malines Council, and it seems to us that when normal times return this reasonable interpretation of the law will become generally accepted.

Some, indeed, may interpret their obligation, on the new theory, so liberally that it will have to be admitted that they are not really fasting. But they are attempting, at least, to observe the law and they arc practising some little mortification in the consumption of food; as they grow' accustomed to the practice they will, perhaps, be able to fast more perfectly. Most of us, I imagine, feel a certain reproach in reciting the Lenten preface and collects, with their constant references to the fast which it is assumed all the faithful are observing. It is the universal disregard, almost contempt, of the law which is so lamentable, and when this disregard is on the part of otherwise excellent Catholics, we arc bound to conclude either that the law is an intolerable anachronism or that the faithful have interpreted too strictly its provisions.

### **472.—** Chief Meal

*Is there any restriction on the kind offood permitted at the chief meal, and may one have this meal at any hour of the day?*

(i) Fervent early Christians, remembering the saying of Our Lord (Luke v, 34), apparently took no food whatever during the last days of Holy Week, "the days when the Bridegroom is taken away". The less fervent took only bread and water. As the fast became extended to the whole of Holy Week, and then to the forty days preceding Easter, a complete fast, or even a bread and water fast, was clearly impossible even for the most fervent. By the fourth century the fast consisted in taking one meal in the

evening, after the time of Vespers, at which meat, fish, eggs, lacticinia and wine were excluded. By the eighth century, in northern climates such as England and Germany, the ban on the quality of the food allowed was gradually withdrawn. In the thirteenth century, largely through the influence of an English Franciscan theologian, Richard Middleton, the hour of taking food was advanced from evening to midday, a change which involved anticipating the liturgical hour for Vespers during Lent, in order to preserve the semblance of the ancient rule.

By the end of the Middle Ages the ancient idea of one meal, as constituting the essence of the ecclesiastical fast, had developed into one full meal, and the moralists of the eighteenth century, particularly St Alphonsus, endeavoured to fix exactly what was permitted outside of this full meal. The modern manualist, speaking generally, follows on the traces of the eighteenth-century writers.

In spite of this gradual mitigation of the law, one great principle, so to speak, has remained intact, namely, that the substance of a fast consists in taking only one full meal, and all the concessions and modifications have been introduced for the purpose of making it possible for the faithful to observe the substance of the fasting law. Canon 1251, §1: "Lex jejunii praescribit ut nonisi unica per diem comestio fiat; sed non vetat aliquid cibi mane et vespere sumere, servata circa ciborum quantitatem et qualitatem probata locorum consuetudine."

(ii) The interpretation of the law concerning the chief meal offers little difficulty. The pre-Codc law which forbade combining fish with meat is now abrogated and, except on those days when the law of abstinence is to be observed, there is now no restriction on the kind of food that may be taken. Nor is there any restriction of quantity beyond what is required, at all times, by the virtue of temperance: excess at the chief meal is a sin of gluttony but not an infringement of the fasting laws.

But there is a difference of opinion in deciding at what hour the chief meal may be taken. Some hold that the substance of fasting requires that the time of the meal should not be before midday. The hour was gradually advanced from evening as people found it more difficult to keep the primitive observance, but the idea was always preserved that a period of waiting for food is essential in fasting, a period which has been, indeed, very much shortened, but which is still so radical that the fast is not kept if the principal meal is taken considerably before midday. Hence in canon 1251 the words "mane et vespere", referring to the other slight refections, lead one to suppose that the chief meal cannot be taken early in the morning; the interchange of the evening collation with the chief meal is expressly sanctioned by the Code, but not the interchange of the *frustulum* with the chief meal. If this view is correct, it is a grave sin to anticipate the hour of the chief meal considerably before midday.[1]

Others give a more liberal judgement on the question. They say that the time of the chief meal is not of the substance of the law. The only thing which is completely certain and unquestioned is one full meal a day; the hour of the repast is of secondary importance, for the Code allows it to be taken cither at midday or in the evening. It is lawful to advance the hour

[1] Merkclbach, *Thtol. Moralis,* Π, §950, is an example of a recent author who holds this stricter view.

if there is a sufficient reason: a traveller, for example, could have his chief meal the first thing in the morning, if by so doing he could keep the substance of the fast.1 This liberal view can be called "probable" in the accepted sense of the word. It is held by some manualists and, in particular, by the learned and saintly bishop of Bruges: "Pars seu conditio essentialis ieiunii semper habita fuit ut unica tantum fiat refectio ... ita. ut sine hoc non concipiatur ieiunium. . . . Altera pars de non anticipanda certa hora principalis refectionis, non est essentialis iciunio, sed integralis tantum, ita ut adhuc ieiunare, licet diminute, intclligatur ille, qui semel in die, quavis hora, plene reficiatur."2 To advance the chief meal to breakfast time, as a possible amelioration of the law, would have slight attraction for the majority of people: the prospect throughout the rest of the day would be too bleak and cheerless. But it might, conceivably, suit the circumstances of a few English people, who are worse than helpless without a solid and imposing breakfast. By adopting it, some could observe the law of fasting who would, otherwise, not fast at all in any sense of the word.

### 473.— Refections

*Would it be a correct interpretation of the law, on a day offasting without abstinence, io allow a small quantity of meatfood at the subsidiary repasts as well as at the chiefmeal?*

Canon **izji, §i:** Lex ieiunii praescribit ut nonnisi unica per diem comestio fiat; sed non vetat aliquid cibi mane et vespere sumere, servata tamen circa ciborum quantitatem et qualitatem probata locorum consuetudine.

§z. Nec vetitum est carnes ac pisces in eadem refectione permiscere; nec serotinam refectionem cum prandio permutare.

(i) The suggested interpretation is certainly possible from the text of the law as contained in the Code, but one must take into account custom in determining what is permitted at the light refections. There has been a movement during the last few years to make fasting easier by rejecting a too rigid computation of the quantity permitted at these light refections, and two ounces for the *frustulum* and the eight ounces for the collatio are no longer regarded as a flat rule. But, as regards the quality of the food permitted, meat and its derivatives have always been excluded by authors who arc cither interpreting the law or explaining to us the customs of certain districts. Immediately after the appearance of the Code, certain writers deduced from the above canon that meat could be taken more than once a day, on days of fasting without abstinence; the *Code Commission* decided, 29 October, 1919, that this interpretation was incorrect. The reason, of course, is that the essence of the fast is one full meal, the other two refections being allowed in order that one may take just sufficient light nourishment to enable one to observe the fast. There is abundant authority permitting the interchange of the evening collation with the morning *frustulum,* a practice sanctioned by the Liverpool instruction of '924.

(ii) The *frustulum* is commonly taken to be restricted to bread, but it

[1] Acrtnys, *Theol. Moralis,* I, §1045.
[2] *De Virtutibus Cardinalibus,* p. 155.

may be noticed that the instruction approved by the Holy Sec for this country in 1925 simply refers to "food". Most people would prefer ordinary bread, but there is no reason why the/rzzr/zz/zzzzz should not be composed of any of the cereals recommended for use at breakfast. Clearly there must be a limit somewhere. One might be encouraged by the concession of a little butter, to dally with the temptation of a small egg or a little kipper. I know of no theory, custom or author tolerating any food, in the composition of the *frustulum,* beyond bread or its equivalent, and condiments such as a little butter, sugar or milk. This is quite a comfortable little meal, differing very little from what the tourist programmes call a continental breakfast, and although it is less engaging than the average Englishman's breakfast, it should be quite sufficient for the generality of people.

### **474.—** Abstinence: Condiments

*Is the use of dripping and suet forbidden on days of abstinence?*

Canon 1250: zXbstinentiac lex vetat carne iureque ex carne vesci, non autem ovis, lacticiniis et quibuslibet condimentis ex adipe animalium.

By condiment *(condio*—to season, to make savoury) is meant something added in a small quantity to food in order to make it palatable; also, since food is made palatable by being cooked, it includes something used in the preparation of food.

The law of abstinence docs not permit any flesh, even when used as a condiment. An omelette, for example, is made more palatable by adding fragments of ham; various uninteresting kinds of food, such as macaroni, can be brightened up by using a little gravy (ius ex carne). Both of these condiments arc forbidden by the law. What is permitted as a condiment is the *fat* of animals, whether in liquid or solid form. Thus, dripping used for frying fish is certainly permitted. If someone with unusual tastes proposed to make a meal of dripping, this would be against the law, not because the food is meat or gravy, but because it is the fat of animals and not taken as a condiment.

Suet, the fatty tissues in the region of the loins and kidneys, presents a problem which is capable of solution *modo sueto.* If we class suet as flesh meat, following Fr Slater,[1] it is not permitted even as a condiment. But, in our view, the phrase "ex adipe animalium" is sufficiently wide to include what is, in the common estimation, not meat but fat. It may therefore be used as a condiment, and Fr Davis[2] permits it as such. Suet pudding, in which a little suet is used as a condiment merely, is not forbidden. If the suet is used in such quantity that it can no longer be called a mere condiment, it is forbidden. We doubt whether, even in the most sucty kind of pudding, the suet is ever more than a "condiment" to the flour. Pudding can be made with butter or dripping instead of suet, but it is not so light and palatable. Therefore it is simpler to say, without any culinary distinctions, that suet pudding is not forbidden on days of abstinence. The point is at least that kind of *dubium* which permits liberty.

[1] *Moral Theology.* I. p. 360.
[1] *Moral Theology.* II?p. 4^6.

*Certain people dip bread in welted bacon fat; also they use the blood from slaughtered poultry in the composition of a kind of pudding. Are these foods forbidden by the law of abstinence?*

The law of abstinence, in the same way as that of fasting, has been gradually relaxed. Particular induits[1] permitting, for example, butter or lard as condiments, were held to extend to the fat of any animal used as a condiment, and this is now not merely an induit but the law of canon 1250. As in many other things, upon which a practical judgement is required, everyone is agreed that the criterion is to be sought in the common estimation of what is to be considered fat and condiment, and the moral theologians try, with more or less success, to interpret this. A search through a number of manualists will reveal that all sorts of things are permitted which, in this country[2], no one wants to cat cither on Friday or on any other day. But they do not actually touch the problem of bread dipped in bacon fat, though many do discuss and permit animal fat in general which is spread on bread. In our view bread dipped in bacon fat is not forbidden by the law of abstinence. The point is, at least, doubtful, and may be resolved in favour of liberty. "Ex dictis etiam consequitur, licitum esse panem adipe linitum; tum quia dici potest, per modum condimenti sumi non solum illud, quod cum cibo coquitur, verum etiam illud, quod ei mere saporis augendi gratia additur; tum quia lex severius sumpta pauperibus praesertim noceret."[3]

But with the best will in the world to be indulgent, it cannot be said that the blood of animals is permitted even as a condiment. There is complete agreement that "caro" includes "sanguis", but it is, of course, open to any priest to allow certain of the faithful to remain in good faith, on the ordinary principles, particularly in the case of poorer people.

### 475.—Abstinence: Water Fowl

*Most manualists admit, though with some hesitation, that waterfowl is permitted in some places. Would this apply to England? If so, what is waterfowl and why is it an exception?*

Following St Thomas—"huiusmodi autem sunt carnes animalium in terra nascentium, et respirantium"[4]—many authors incline to a liberal interpretation and permit the use of creatures which do not come strictly within this definition. Others deline flesh as that which belongs to animals with warm blood. The true solution, in this and in many other questions, is to be found in a definition according to the common estimation of what constitutes flesh meat, not according to the data of natural science. For the most part there is agreement, and the rule, tersely expressed by d'Annibale, can usually be applied without difficulty: "Carnes autem accipimus animantium quae terra, pisces qui aqua vivant. Amphibia accensentur ei cui proprius accedunt; seu carni seu pisci; in dubio utri magis accedunt, mos regionis consulendus est: et si nec regionis mos appareat, comedi poterunt."*

1 Cf. *Tontes,* nn. 1116, 1179.
* Woutcrs, *Tbeol. Moralis,* I, n. 1094.
« II-II, 147, s.
4 *Tbeol. Moralis,* ILI, n. 132.

Water fowl arc such creatures as gulls, teal, wild ducks. The difficulty about these culinary questions is that one has to refer to foreign writers for anything like a full treatment of the subject, and the names of various creatures are sometimes unusual or of purely local use. One French author discusses at length the rights and wrongs of eating "la morelle", which is evidently some kind of amphibious animal. Cassell's *French Dictionary* declares that "la morelle" is nightshade, and this would be forbidden food for quite different reasons. It is certain that good Catholic people in some few places regard water fowl as permitted on abstinence days. The reason for this may be sought, perhaps, in the fact that these creatures live on fish and dwell in or in the neighbourhood of water. Some slight official confirmation may be seen in an induit of Pius VII, 22 February, 1804, which permitted the Minims of St Francis de Paula, whose rule required perpetual abstinence, the use of water fowl *(fulix,* coot). The confirmation is of the slightest kind since it was a modification of the particular rule of these religious, not an interpretation of the common law of abstinence.

Generally it must be maintained, we think, that water fowl is flesh and is forbidden by the common law. Waffelaert, who analyses such points more carefully than the manualists are accustomed to do, writes: "inspecto enim principio generali, ct natura illorum volatilium (aves aquatiles) staret omnino prohibitio; sed vigente consuetudine in aliquibus locis, et consentientibus Ordinariis, damnare non auderemus qui consuetudinem sui loci sequerentur".[1] Custom has departed from the common law in some places, and it may be continued by the local faithful until authority decides on its abolition.

In England it is certain that no custom of the kind exists. Water fowl is forbidden food for us on abstinence days.

### 476.— Ordinary Dispensing Abstinence

*What are likely to be considered suitable occasions for obtaining from the Ordinary a dispensation from the law of abstinence for all the Catholics of a town? One is loth to ask a favour which will very likely be refused; the kind of occasion one has in mind is when the town is celebrating the grant of a charter.*

Canon 1245,52: Ordinarii, ex causa peculiari magni populi concursus aut publicae valetudinis, possunt totam quoque dioecesim seu locum a ieiunio et abstinentia vel etiam ab utraque simul lege dispensare.

5. *Off.,* τ8 March, 1896: (i) Utrum ad hoc ut Episcopus dispensare valeat ad tramitem dicti decreti,[2] neccsse sit ut festum celebretur semper magno populorum concursu? *Resp.* Affirmative.

(ii) Utrum Episcopus dispensare possit quando agitur tantum de festis duplicis praecepti; an etiam quando agitur de alio festo vel de alia catholica solemnitate, ex. gr. de centenaria, de peregrinationibus ct similibus? *Hkesp.* Negative ad primam partem, affirmative ad secundum, modo adsit magnus populorum concursus.

(iii) Quomodo sit intelligendum *magnus populorum concursus*: an populorum

[1] *De Virtutibus Cardinalibus,* p. 153.
[1] *Decretum,* 5 December, 1894; *Fontes,* n. 1172.

extraneorum, vel etiam eiusdem civitatis aut loci? *Resp.* Attentis omnibus, intelligi potest etiam de concursu civitatis aut loci, facto verbo cum SSmo.

(iv) Utrum inter causas gravissimas ob quas Episcopus non solum anticipare, sed etiam dispensare potest, assignari valeat, grave periculum quod abstinentia anticipanda non observetur. *iCesp.* Affirmative.[1]

*Code Commission,* iz March, 1929: An magnus populi concursus, de quo in canone 1245, §2, habeatur etiam per extraordinariam fidelium unius tantum paroeciae ad festum in Ecclesia celebrandum? *Rssp.* Affirmative.[2]

The power of giving a dispensation, according to the terms of canon 124$, §2, is general, not confined to a particular case, and is therefore to be interpreted not strictly but widely and favourably.[3] No distinction or reservation need be made, as between parishioners and visitors from other places, in deciding that there is a large concourse of people; nor need any distinction be made between Lent and other times of the year; thus St Patrick's Day is not excluded from the benefit of a dispensation if the other conditions are present.

A number of instances to which the canon is applicable are mentioned in the reply of the Holy Office of 18 March, 1896; the authors suggest others such as secular holidays or anniversaries, and the health clause of the canon applies to a dispensation given as a preventative measure. The Holy See has declined to dispense the law of fasting and abstinence on Christmas Eve, but the official commentator remarked that the ordinary rules of the moral theologians could be applied to individuals, and likewise the law of canon 1245, §2, could be used, whenever the occasion warranted it.[4] The American bishops have an induit permitting them to dispense fasting and abstinence on the civil holidays, i.e. the days we would call bank holidays.

There would seem no doubt whatever that the occasion of a town being *tnfête* is well within the terms of this canon, but its application is absolutely in the discretion of the Ordinary. In this country we are less accustomed to disregard the abstinence laws, even on occasions when the common interpretation of the law permits it, since the observance of Friday abstinence has come to be, as it were, the mark of a good Catholic, and we are afraid, perhaps unduly so, of giving scandal.

### 477.—Parish Priest Dispensing Abstinence

*Does a parish priest exceed his powers in giving a dispensation from abstinence ro all the persons assembled at a house within his parish on the occasion of a wedding?*

Canon 1245, §1: Non solum Ordinarii locorum, sed etiam parochi, in casibus singularibus iustaque de causa, possunt subiectos sibi singulos fideles singulasve familias, etiam extra territorium, atque in suo territorio etiam peregrinos, a lege communi de obsonantia festorum itemque de obscnrantia abstinentiae ct iciunii vel etiam utriusque dispensare.

The power of rhe parish priest is limited to dispensing single individuals or single families, and it is taken for granted that there is a just cause.

[1] *Fontes,* n. 1176.
[2] *A.A.S.,* i929. XXI, P· 170·
[3] Cf. *Periodica,* 1929, p. 175 and canon 85.
[4] Cf. *Fbe Clergy Review,* 1938, XV, p. 80.

It is agreed that a dispensation for a family includes the servants and other people belonging to it habitually. "Comprehenduntur non tantum parentes et liberi, sed et omnes qui aliquo modo stabili partem huius determinatae familiae constituunt, ut famuli et ancillae."[1] It is also beyond dispute that the visitors to the house may be dispensed as *peregrini,* if the names of each are presented to the parish priest.

Also, without great difficulty, it can be admitted that if a family is lawfully dispensed from the law of abstinence, visitors to the house may also take meat, not precisely because of the dispensation but because of the difficulty of providing a separate meal. This interpretation may be deduced from a similar case resolved by the *Sacred Penitentiary, i-j* May, 1863.[2]

But it is disputed whether, in this context, the word "familia" may be taken in a wide sense, so as to include those invited to a family reunion, such as would occur at a wedding. For we have to bear in mind canon 85: "Strictae subest interpretationi non solum dispensatio ad normam can. 50, sed ipsamet facultas dispensandi ad certum casum concessa." Some writers hold that the word is not to be taken in this wide sense and Dr Brys, who has made a particular study of dispensations, is of this view.[3] Others, probably the minority, adhere to the liberal interpretation, c.g. Loiano: "Dispensatio concessa toti familiae videtur extendenda etiam ad hospites et invitatos ad prandium, non autem ad eos qui ad eludendum abstinentiae legem se eidem familiae coniungunt."[4] Gcnicot-Salsmans is quoted for this view and it has been defended consistently by writers in *l'Ami du Clergé'.* ". . . les invites de la noce constituant ce jour là un groupe dont on peut dire qu'il est moralement parlant familial". We think that this liberal view may be safely followed. It represents, so it would seem, the mind of the legislator. At the very least, it may be held that a parish priest may validly dispense the whole nuptial gathering, since it is an act of jurisdiction and the Church supplies in cases of doubt.

### 478.—Curate Dispensing Abstinence

*May a curate {vicarius cooperator), from canon* 476, §6, *dispense parishioners from the laws of abstinence?*

Canon 476, §6: Eius iura et obligationes ex statutis dioccesanis, ex litteris Ordinarii et ex ipsius parochi commissione desumantur; sed, nisi aliud expresse caveatur, ipse debet ratione officii parochi vicem supplere eumque adiuvare in universo parocciali ministerio, excepta applicatione Missae pro populo.

Canon 1245, §1: Non solum Ordinarii locorum, sed etiam parochi, in casibus singularibus iustaque de causa, possunt subicctos sibi singulos fideles singulasve familias, etiam extra territorium, atque in suo territorio

[1] *Collât. Brngen.,* 1924» p. 162.
[1] Cf. Acnnys-Damcn, *Tbeol. Moralis,* I, §1057.
[›] *Collât. Brt4gen.,* loc. cit.
[4] *Tbeol. Moralis,* II, §48}.
[*] »925. P· 582; 19M. P· 25. P· 635-

etiam peregrinos, a lege communi de observantia festorum itemque de observantia'abstinentiae et iciunii vel etiam utriusque dispensare.

Canon 80: Dispensatio, seu legis in casu speciali relaxatio, concedi potest a conditore legis, ab eius successore vel Superiore, nccnon ab illo cui iidem facultatem concesserint.

The common law of the Church enacts practically nothing concerning the powers of curates attached permanently to the service of a parish, except the very general rule of canon 476, §6, directing that he is bound to supply the place of the parish priest and to assist him in the whole of his parochial ministry. This general rule always obtains "nisi aliud expresse caveatur". The parish priest is bound by the diocesan laws or episcopal regulations which may define more closely the powers of the curate, and if there are no regulations he can demand his help or decline it as he wishes. There is always the method of recourse to the Ordinary on the part both of the parish priest and of the curate.

The chief difference between their respective powers is the difference between ordinary and delegated jurisdiction. The delegation is received, for some things, from the Ordinary, e.g. faculties for hearing confessions; in other things from the parish priest. We think that the parish priest may, from canon 199, §1, delegate the dispensing power of canon 1245 to his assistant.

But may the assistant maintain that he has already received this delegated power from the Ordinary by reason of his appointment? We think that this conclusion cannot be drawn, notwithstanding the opinion of Fr Augustine in his *Commentary on Canon Law,* II, p. 75. It seems clear enough that a person who is sent to aid another does not by that fact become possessed of the powers enjoyed by the person he is sent to assist, except in so far as they arc determined by law or delegated. Nor can the phrase "ad parochi vicem supplendam" possibly bear the meaning that all the powers of the parish priest which arc not expressly excluded are enjoyed by the curate. This would almost mean, in effect, the appointment of two parish priests to the same parish and the end of all law and order.

The most the curate can do in this matter, unless expressly delegated, is to declare, as a confessor, that a penitent is excused from the law because of the moral impossibility of observing it.

### 479.—Excuse or Dispensation

*May the faithful who, on the current teaching, are excused from observing this law, dispense themselves? Or are they not bound, in principle, to get a dispensation from a parish priest, at least when one can easily be reached?*

*Summa Tbeol.,* II–II, 147.4: . · · legislator in eis statuendis attendit id quod communiter habetur, et in pluribus accidit; si quid autem ex speciali causa in aliquo inveniatur, quod observantiae statuti repugnet, non intendit talem legislator ad statuti observantiam obligare . . . non videtur fuisse intentio Ecclesiae statuentis ieiunia, ut per hoc impediret alias pias, et magis necessarias causas. . . .

Canon 84, §2: Dispensatio in dubio de sufficientia causae licite petitur et potest licite et valide concedi.

Canon 1245, §1: . . . parochi, in casibus singularibus iustaque de causa, possunt subicctos sibi singulos fideles - - - a lege communi - - - de observantia abstinentiae et ieiunii . . . dispensare.

It is incorrect to speak of a dispensation except when it is given by an ecclesiastical authority having the power. Inability to observe the law excuses one from the obligation, without obtaining a dispensation, a principle accepted even in St Thomas's day, though he is somewhat stricter in applying it. A judgement that one is excused may be made by any of the faithful properly instructed, or the sanction of a simple confessor not enjoying powers of dispensation may be sought.

(i) Inability to observe the law may be of the natural or physical order. This can be "absolute" in some cases, but it usually is "moral", namely when observance of the law, though physically possible, is accompanied by some notable physical injury; this may arise from one's state of health, or from poverty, or from the nature of one's work or occupation, whether the labour is manual or intellectual.

Inability may also be of the spiritual order, by which is meant that the law of fasting or abstinence is found to be in conflict with some higher law which has precedence. It may be absolute in some instances, as when a pregnant mother by fasting would endanger her health and that of her offspring, in which case she is not only permitted but bound to forgo the fast; quite often inability of the physical order accompanies that of the spiritual order, and is the reason why a person is unable to observe both the fasting law and a higher law of justice. Usually the inability is not absolute but moral, namely when the observance of the fasting law is accompanied by some notable loss of the spiritual order, as when a person by fasting would have to forgo some notable work of charity.

(ii) Numberless casuistical questions emerge from the above doctrine. It must be conceded that if the excusing reason, under any of the headings outlined, is solidly probable, a dispensation, though always praiseworthy because safer, is not necessary. But if the alleged excusing reason, though just in itself, is insufficient for reaching the conclusion that the law need not be observed, a dispensation is necessary, which can be obtained from parish priests and others having the faculty. It must be noted, also, that an excusing cause is more easily discerned in the matter of fasting, less easily in that of abstaining; the practice of the faithful in England, during normal times, reflects this distinction: nearly all of them excuse themselves from fasting, for one reason or another, but not from abstinence: in the latter case they are accustomed to seek a dispensation, if the law is difficult to observe.

The manualists try to weigh the reasons justifying non-observance of the law in individual cases, e.g. the distance in making a journey, but the result is not at all satisfactory, as so much will depend on the strength of the traveller, the nature of his vehicle, if any, and the condition of the weather. L Itimately the decision is for the individual conscience, and unless it is well informed, the proper course is to seek a dispensation.

The clearest and most logical modern explanation of the whole question is that by Dr St Willems in *Collationes Brngenses,* 1951, pp. 51–64; 147-154; 251-241, which has been used in the above outline.

## §6. UNCLASSIFIED

### 480.— Legitimacy

*Is a child, conceived before but born after the marriage of its parents, to be considered legitimate or as merely legitimated by subsequent marriage (canon* 116)? *Since subsequent marriage legitimates a child, it would appear that the grant in canon* 1051 *is superfluous, unless we are to hold that legitimacy is effected by canon* 1051 *even though the marriage does not take place.*

Canon 1051: Per dispensationem super impedimento dirimente concessam sive ex potestate ordinaria, sive ex potestate delegata per indultum generale, non vero per rescriptum in casibus particularibus, conceditur quoque eo ipso legitimatio prolis, si qua ex iis quibus dispensatur iam nata vel concepta fuerit, excepta tamen adulterina et sacrilega.

Canon 1114: Legitimi sunt filii concepti aut nati ex matrimonio valido vel putativo, nisi parentibus ob sollemnem professionem religiosam vel susceptum ordinem sacrum prohibitus tempore conceptionis fuerit usus matrimonii antea contracti.

Canon 1116: Per subsequens parentum matrimonium sive verum sive putativum, sive noviter contractum sive convalidatum, etiam non consummatum, legitima efficitur proles, dummodo parentes habiles exstiterint ad matrimonium inter se contrahendum tempore conceptionis, vel praegnationis, vel nativitatis.

(i) The canonical notion of legitimacy does not tally exactly with the notion derived from natural law, but is concerned with the legal effects of that status; thus St Thomas observes: "Filius illegitimus potest legitimari non ut fiat de legitimo coitu natus, quia coitus ille transivit, et numquam potest fieri legitimus, ex quo semel fuit illegitimus: sed dicitur legitimari inquantum damna quae illegitimus filius incurrit subtrahuntur per legis auctoritatem."[1] The law of canon 1114 regards a child as legitimate if it is born from a valid or putative marriage, thus indulgently extending the term "legitimate" to include the case where conception occurred before marriage; the latter part of the canon, on the other hand, refuses this indulgence in the case of sacrilegious progeny conceived in extremely rare and unusual circumstances.

Moreover, the canon law draws a distinction between "legitimate" and "legitimated", and although for the most part the two are identical as regards the canonical effects, there arc some important exceptions. Thus canon 232, §2, 1, excludes from the cardinalate "illegitimi, etiamsi per subsequens matrimonium fuerint légitimât?'. On the other hand, the *Code Commission,* 15 July, 1930, decided that "filii legitimi" in canon 1565, §1, includes candidates for the priesthood who have been legitimated by the subsequent marriage of their parents.

Accordingly, the answer to the first question is certain. It we confine ourselves to the canonical use of words, a child born after the marriage of its parents is legitimate, not merely legitimated, and it is irrelevant tron·» the canonical point of view whether the child was conceived before or after

[1] *Supplement,* 68.3.

marriage. "Hac igitur ratione si intelligatur verbum 'nati' de quo in can. 1114 (quod aliter intelligi nequit) proles ante matrimonium concepta, sed durante matrimonio nata, est vere legitima, non legitimata per subsequens matrimonium."[1] "Nimirum, quamvis ut ita dicam ex natura rei legitimitas sequatur solam legitimam conceptionem, beneficio tamen legis canonicae sufficere potest ut filii nascantur ex parentibus qui, etsi momento conceptionis nondum fuerint coniuges, postea tamen et quidem ante nativitatem prolis suae matrimonium inter se contraxerunt."[2]

(ii) A child who is not legitimate may become "legitimated" by papal rescript, by *sanatio in radice* of the invalid marriage, by dispensation (canon 1 o ji), and by the subsequent marriage of its parents; the second question relates the two last methods mentioned.

The terms of canon 1051 arc not superfluous, since legitimation by subsequent marriage, as in canon 1116, is only effected when the parents are "habiles", that is to say when they arc, at the time of conception, pregnancy or birth, free to marry because not barred by a diriment impediment. If they arc barred by a diriment impediment such as difference of worship, which ceases on the reception of baptism, their subsequent marriage does not legitimate the offspring, as the *Code Commission* expressly decided 6 December, 1930, strictly interpreting the terms in the latter part of canon Tit6. "An vi canonis 1116 per subsequens parentum matrimonium legitima efficiatur proles, ab eisdem genita detentis impedimento aetatis vel disparitatis cultus, quod cessaverit tempore initi matrimonii? *Res/).:* Negative."[3] The remedy in such cases is to seek a papal rescript. For the most part, diriment impediments cease only by dispensation, and canon 1051 provides for the legitimation of offspring whenever a dispensation is granted within the terms of that canon.

Strange as it may appear at first sight, it must be held that the offspring is legitimated whenever a dispensation is granted within the terms of canon 1051, even though the parties, after obtaining a dispensation, do not contract marriage. There arc commentators who think that, the dispensation being granted *intuitu matrimonii,* legitimation has no effect until the marriage is contracted, and Gasparri is himself of this opinion if the marriage is culpably declined by the parties who sought and obtained the dispensation.[4] But the opposite opinion is more common, and we believe correct: legitimation is effected by dispensation within the terms of canon 105 t, whether the marriage takes place or not, whether it is refused inculpably or not: "In praesenti casu agitur de parentibus inter quos extat impedimentum dirimens, dispensabile, quique prolem saltem conceperint, cum iam aderat impedimentum, sed antequam dispensatio ab eo concessa sit. Tunc autem si proles iam nata sit cum dispensatio conceditur, proles est spuria, ideoque per subsequens parentum validum vel putativum matrimonium légitimât! nequit: legitimatur igitur, nisi adulterina sit vel sacrilega, per dispensationem. Si autem proles nascatur postquam concessa sit dispensatio, sed antequam incantur nuptiae, ipsa iam non est spuria, ideoque, si matrimonium postea revera ineatur, pleniorem legitimationem nanciscitur per ipsum matri-

1 Ciprotti in *Apollinaris,* 1939, p. 354- This is the most complete discussion of the subject known to us.

* V. Couckc in *Collât. Brngen.,* 1931, p. 4j8·

9 Cf. *Periodica,* 1950, p. 28; I931» P· M9·

*4 De Matrimonio,* §358.

monium; quodsi matrimonium, etsi obtenta sit dispensatio, non incatur, tunc proles manet legitima per dispensationem. Si denique proles nascatur post initas nuptias, nulla legitiraatione indiget, cum sit legitima ex can. 1114."[1] The reasonableness of this solution is apparent if we bear in mind that canonical legitimacy is a legalistic concept, and that no person whatever is absolutely barred from its benefits, no matter how unlawful his origin may be from the point of view of natural law.

### 481.—Westminster Version

*Seeing that the Westminster version, which is now complete, is an accurate and faithful translation, and that it has been published with the fullest episcopal approval, is one permitted to read at Mass the appropriate extract from the epistle and gospel in this version instead of in the customary Douay version?*

*Biblical Commission,* 50 April, 1934; *A.A.S.,* 1934, XXVI, p. 515: Utrum permitti possit in ecclesiis populo praelegi pericopas liturgicas epistolarum et cvangeliorum secundum versionem non ex veteri vulgata latina editione, sed ex textibus primigeniis sive graecis sive hebraeicis?

Pont. Commissio de re Biblica ita respondendum decrevit: *Negative;* sed versio S. Scripturae Christifidelibus publice praelegatur ex textu ab Ecclesia pro Sacra liturgia approbato.

The decision given by the *Biblical Commission* is not a new interpretation of the law, but an application of a rule which has always been in force, inasmuch as the Church, from the times of the Council of Trent at least, has always insisted upon the Vulgate being used for public teaching and preaching. ". . . statuit et declarat, ut haec ipsa vetus et vulgata editio, quae longo tot saeculorum usu in ipsa Ecclesia probata est, in publicis lectionibus, disputationibus, praedicationibus et expositionibus pro authentica habeatur, et ut nemo illam reicere quovis praetextu audeat vel praesumat".[2] The Council made no decision about vernacular translations; in fact, some of the fathers and theologians of Trent desired that all vernacular translations should be forbidden. But it is evident that the reasons which urged the use of the Vulgate in public teaching apply also to translations of the scriptures. There is also the closest connection between the liturgy of the Mass and the homily on the gospel, which clearly demands that the extracts read in the vernacular should correspond as nearly as possible to what has been read at the altar.

### 482.—Inscription in Confraternities

*In enrolling the faithful in confraternities which usually require notification to headquarters, is a priest member of the A.P.F. dispensed from this notification if no mention is made of his obligation in the booklet of privileges of tbe A.P.F.?*

[1] Ciprotti, loc. cit., p. jxx; Cf. also in the same sense Gtppcllo, *De Matrimonia,* §291.5 and *Collât. Brugen.,* loc. cit., p. 444.

[*] Dcnz., 78j.

*As this obligation is mentioned in some cases (e.g. Arcbconfratemity of Cordigers} it does not seem to have been omitted by accident in others.*

*If he is not dispensed, couldyon say where the headquarters are in England of the Brown, Black and Trinity scapulars?*

(i) The powers enjoyed by priest zelators of the A.P.F. for the purpose of investing the faithful in various confraternities, to which the wearing of a scapular is attached, are contained under nn. 4-9 in section D of the papal constitution d :tcd 25 March, 1924. Our correspondent may be using an earlier document; the current one mentions inscription for each of the five scapulars, but following the rule of canon 694 it is commonly held that it is not necessary for the validity of the act except in three cases: Our Lady of Mt. Carmel (brown), the Blessed Trinity (white), Our Lady of Sorrows (black).

The Holy Office (Section of Indulgences), 25 April, 1914, ruled that the omission of inscription does not deprive a person of the indulgences attached to a confraternity "firma remanente in conscientia obligatione inscribendi et transmittendi nomina".1 Moreover, defects arising on various counts, through the lack of one formality or another, are periodically remedied by *sanatio* granted by the Holy See.

The situation, therefore, is that in so far as gaining indulgences is concerned, inscription is not a *sine qua non.* Nevertheless, there still exists an obligation in conscience to have the names of recipients inscribed, and this may not be omitted unless one enjoys an additional faculty for the purpose.

(ii) There arc two ways, at least, by which one may be relieved of this obligation of inscribing names: firstly, by becoming a cardinal—canon 239 § i, J: "scapularia . . . imponendi sine onere inscriptionis"; secondly, by being accepted as a member of some Association such as "Pia Unio Cleri pro Missionibus", an account of which may be seen in Q. 455. This faculty, as well as some of the others suppressed since 1933,2 rnay be obtained by application cither to the superiors of the Association "Pia Unio Cleri pro Missionibus", or to the Holy Sec. The faculty which used to be obtained before 1933 reads: "Benedicendi ac imponendi, sub unica formula, scapularia Passionis D.N.J.C., Immaculatae Conceptionis B.M.V., SS. Trinitatis, B.M.V. Perdolentis, B.M.V. a Monte Carmelo, absque inscriptionis onere in album Confraternitatis."

(iii) If the obligation of inscription is not dispensed, the priest should keep a register of the names inscribed in the various associations and forward them every year or so to any house of the Order to which the association belongs; it is not necessary to send the names to the chief house of the Order. Thus for the brown scapular (Our Lady of Mount Carmel): Carmelite Church, Kensington Church Street, London, W.8.; for the black scapular (Seven Dolours): Servite Church, 264 Fulham Road, London, S.W.10; the white Scapular (Blessed Trinity): Minister General of the Trinitarian Order, 23 Via del Quirinale, Rome.

l *Fontes,* n. 1295.
1 Cf. Q. 454.

## 483.—Judgement of Tribunal

*In the deliberations of the collegiate tribunal of three judges it transpired that the "ponens" held the nullity not proved, whereas the other two judges held it proved. The "ponens" maintains that, in these circumstances, the sentence should be written not by himself but by one of the other two judges. Is this correct?*

*S.C. Sacram.,* 15 August, 1936, art. 200, §2: Sententia latino idiomate exaranda est a ponente, nisi forte alii ex iudicibus in discussione hoc munus, iusta aliqua de causa, commissum sit.

*Normae S. Romanae Rotae Tribunalis,* 29 June, 1954; *A.A.S.,* 1934, XXVI, p. 449; art. 143, §2: Sententia latino idiomate exaranda est a ponente, nisi forte in discussione visum fuerit aliqua de causa hoc munus alii ex Auditoribus committere. Extensor sententiae uti potest opera Seer ti ex officio.

The 1936 Instruction for diocesan tribunals follows closely the rules drawn up in 1934 for the Kota, since the same canonical principles govern both. The restoration of this ancient Roman tribunal was effected by Pius X,1 and the *Lex Propria* of the newly constituted tribunal, first issued 29 June, 1908,2 contains under canon 32, §2, the rule incorporated in the *Normae* of 1934: "exaranda (sententia) vero vel a causae ponente vel ab alio ex Auditoribus cui hoc munus in secreta causae discussione commissum sit".

Neither of the two texts quoted above suggests the just cause for the appointment of a judge other than the *ponens* to write the sentence; it is a task of some importance and difficulty, and usually falls to the *ponens,* as determined in art. 22 of the instruction, 15 August, 1936. But in the event of his dissenting from the judgement of his two colleagues, it would be somewhat unreasonable to expect him to compose a judgement supporting a decision which he himself believes to be wrong. This is the just cause which the above directions chiefly have in mind, as Lega implies in the introduction to the volume of decisions of which he was the *ponens.*3 It was not until the reconstitution of the Rota under Pius X that the *ponens* had a decisive vote; in the former practice he presided over the discussions and wrote the judgement in accordance with the decision reached by the deciding judges. "Modie ex adverso cum Ponens partem habeat in causae definitione per suum votum, dum decisionem conscribit cius rationes decidendi exprimit ex votis Auditorum in causae definitionem concurrentium, proindeque etiam ex proprio voto. Illud autem consequitur ex hoc novo stylo quod si Ponens votum ediderit maiori parti Coauditorum contrarium ipse cogeretur scribere in decisione exaranda contra propriam opinionem, quod sane est absonum, unde visum fuit magis opportunum quod alteri Auditori huiusmodi munus committeretur *(L,ex Propria,* n. 32); idque ipsi Auditores in singulis casibus oretenus decernerent. Haec decisio non haberi posset uti lata *coram Ponente* qui eam non exaravit, et esset expungenda a decisionum collectione coram hoc Auditore latarum; sed

1 *Fontes,* n. 682, p. 753. English Tr. in *Leeds Synods,* 1911. p. 217.
3 *Fontes,* n. 6459.
• *Coram Lega,* Vatican Press, 1926, p. 6.

hoc ipsum, et a fortiori quinam ex Auditoribus decisionem conscripserit, id religioso sub secreto servandum est."

Dohcny, commenting on art. 200, §2, of the instruction,1 reaches the same conclusion: "A just reason would appear to be the fact that the original *ponens* did not agree with the majority opinion and consequently would find it difficult to formulate reasons for an opinion from which he personally differed."

We cannot find the point decided anywhere, but it seems to us that the sentence of a diocesan tribunal, signed by the three judges, should have the name of the *ponens* in the first place, as in art. 198, §6, of the instruction, 15 August, 1936, even though this *ponens,* for the reasons we have been discussing, has not composed the written argument on which the decision is based.

1 *Canonica! Procedure in Matrimonial Cases* (1948), p. 483.

# III. CLERICS

## §1. BISHOPS AND ORDINARIES

### 484.—Discussing a Future Pope

*Is itforbidden during the lifetime ofa pope to discuss his successor?*

Constitutio *Vacantis Apostolicae Sedis,* 8 December, 1945; *A.A.S.*, XXXVIII, p. 94. N. 95: Item sub eadem excommunicationis poena prohibemus ne quis, etiamsi Cardinalatus honore fulgeat, vivente Romano Pontifice et eo inconsulto, tractare de ipsius Successoris electione, aut aliquod suffragium polliceri, vel hac de causa privatis conventiculis factis aliquid deliberare et decernere praesumat.

The law contains three *delicta* of which the two last need no explanation: promising votes and holding assemblies. The first mentioned, *tractare de ipsius Successoris electione,* depends on the force to be given to the word *tractare,* the primary meaning of which, in a context such as the above passage, is to take something in hand, to transact or effect some business; a secondary meaning is to investigate or discuss. The commentators are agreed that the law and the censure attached to it are restricted to the former or primary meaning. Thus Coronata: "*Tractare* significat de aliqua re systematice negotiari cum seria intentione, non simpliciter de aliqua re loqui aut aliquid notare; vel etiam significat ex professo agere, vel saltem proposita cum aliis conficere, consultationes facere, consilia conferre intuitu actionis practicac."[1] Cappello: "*Tractare* de futuro Pontifice eligendo non vero simpliciter loqui aut opinari; vox enim *tractare* significat agere ex professo, negotium persolvere, conventiones seu pacta inire etc."[2] It is clearly undesirable to take part in discussions or curious gossip about a future pope whilst the See is not vacant, but what the law forbids is taking effective steps in favour of certain candidates for the papacy, even though it is not a question of securing votes or holding meetings to this end.

The censure could be incurred, for example, by the writer, publisher and printer of a newspaper article written in support of a cardinal who is considered worthy of the office.

It applies to all the faithful—"prohibemus ne quis"—and cardinals are specially mentioned by name because otherwise, from canon 2227, §2, the censure could not be incurred by them. The law is an ancient one and was first made by Pope Symmachus in 499. The constitution of Pius XII is a code of all the laws to be observed *vacante sede* and includes everything pertaining to papal elections.

All who co-operate in the sense determined in canon 2209 arc included in the law, but since the word "praesumat" occurs in the text, crass ignorance excuses one from incurring the censure from canon 2229. From the concluding words in n. 61 of the Pian constitution, it appears that this censure,

[1] *Institidtones luris Canonici,* V, §1925.
[2] *De Censuris,* §572.

and the others promulgated therein, are reserved to the pope *specialissimo modo.*

The Apostolic Constitution *Vacantis Apostolicae Sedis* abrogates former laws on papal elections, including Pius X's *Vacante Sede* printed as Documentum I at the end of the Code.[1] N. 95 which is quoted above is, however, identical with n. 80 of *Vacante Sede.*

**485.—"Sede Vacante"**

*IIow wouldyou meet the objection that "sede vacante" one cannot gain any indulgencesfor which prayerfor the pope's intention is a condition?*

Canon 61 : Per Apostolicae Sedis aut dioecesis vacationem nullum eiusdem Sedis Apostolicae aut Ordinarii rescriptum perimitur, nisi aliud ex additis clausulis appareat, aut rescriptum contineat potestatem alicui factam concedendi gratiam peculiaribus personis in eodem expressis, et res adhuc integra sit.

Canon 73: Resoluto iurc concedentis, privilegia non extinguuntur, nisi data fuerint cum clausula: *ad beneplacitum nostrum,* vel alia aequipollenti.

We have not found this curious question discussed even by writers like Beringer who delight in such. One could argue from analogy with canon 7, perhaps, that "sovereign pontiff" and "Holy See" are interchangeable terms, or one could rely on the two canons quoted above. The difficulty, however, is not about the continuance of all indulgences in general *vacante sede,* but about one of the conditions which have to be observed in gaining most plenary indulgences. In praying for the intentions of the sovereign pontiff we pray for his intentions as they are at the moment of our prayer, though it is not necessary to specify them, but this would seem impossible if he has departed this life.

One remedy is to dispense from this condition, relying on canon 935, which leaves the difficulty unsolved. It is the practice of Catholics everywhere to observe the condition of praying for the pope's intention, when gaining indulgences, even during the interval between the death of one pope and the election of his successor, and it seems necessary to show that this practice is reasonable and should not be disturbed.

We think that the problem is best solved by maintaining that "prayer for the pope's intention" means "prayer for the purpose of gaining the indulgence", and more than one current manual teaches that the latter suffices: Gougnard, *De Indulgentiis,* p. 60: "Sufficit orare ad mentem pontificis, vel etiam probabiliter sufficit orare ad lucrandam indulgentiam: haec enim intentio includit finem a S. Pontifice intentum." Noldin, III, §324, b: "Non requiritur explicita, sed sufficit haec implicita intentio: ad intentionem rom. Pontificis vel ad debitam intentionem, quam omnes habent, qui preces ad lucrandam indulgentiam recitant." This seems to be the meaning of a phrase in the Jubilee "monita" of the *Sacred Penitentiary,* 31 July, 1924, ad xvi, which, after explaining in detail the pontiff's intentions, continues: "Sufficit, ceteroqui, implicite et generaliter ad mentem Romani Pontificis

[1] Cf. *The Clergy* ***Raia***, 1947, XXVII, p. 27, for a commentary' on this new Constitution.

orare . . .” One prays “generaliter” when not aware of what these intentions actually arc; one prays “implicite” when the objects petitioned are of such a character as to include *de facto* the pope’s intention. On this passage of the “monita” *Periodica,* 1925, p. 155, makes the comment: “. . . necesse non est ut fideles norint quaenam sit mens Pontificis: satis est ut confuse, secundum istam mentem orare voluerint, seu ut preces fundere velint sicut requiritur ad indulgentiam obtinendam”.

When describing in detail the nature of this papal intention, all modern documents and commentaries rely on Benedict XIV, *inter Praeteritos (Fontes,* n. 404, §83): “In Constitutione nostra *Peregrinantes,* Basilicarum visitationem devote fieri debere praecipitur, et ad conscquandam indulgentiam, pias Omnipotenti Deo preces adhibendas esse pro Sanctae Ecclesiae exaltatione, haeresum extirpationc, Catholicorum Pnncipum concordia, et Christiani populi salute, ac tranquillitate.” Nothing, it will be observed, is contained in this text about the papal intention; actually it is for the things enumerated, and by making them the object of our petition, or by praying for the purpose of gaining an indulgence, we are by implication praying for the papal intention.

### 486.—Episcopal Throne

*Is it permitted, on the occasion of a bishop's visit to a parish church, to erect for bim a throne on the sanctuary with a canopy as in the cathedral church?*

*Caerem. Epp.,* I, xiii, 3, directs that a canopy should not be placed over the *sedes episcopalis* unless there is a canopy over the altar also, the reason presumably being that the *sedes* should not be given a greater honour than the altar itself. After describing the construction of the throne the text continues: “. . . ct super cam umbraculum, seu baldachinum eiusdem panni et coloris appendi poterit, dummodo et super altari aliud simile, vel etiam sumptuosius appendatur. . . .” An answer of the *Congregation of Piles* directs the episcopal throne to possess a canopy, without mentioning any exception for those churches without a canopy over the altar.[1] But it is clearly more correct, we think, to follow the direction of the *Caeremoniale Episcoporum.*

*May it be said that the restrictions which formerly existed are now abolished by canon* **yj,** §3, *and that any bishop who is the local Ordinary may concede the use of his episcopal throne to any other bishop?*

The restrictions are still in force as may be seen by comparing the following texts:

*S.R.C.,* ia June, 1899, n. 4023: An Episcopus Dioccesanus gaudeat iurc cedendi Thronum suum alteri episcopo cum Reverendissimorum Canonicorum adsistentia sibi debita? *Resp.* Affirmative; dummodo Episcopus invitatus non sit ipsius dioecesani Coadiutor, aut Auxiliaris, aut Vicarius Generalis, aut etiam dignitas seu canonicus in illius ecclesiis. Sicut

[1] N. 2471, 5.

autem Cardinales Episcopi Suburbicarii aliique Titulares Ecclesiarum Urbis Purpuratis tantum Patribus Thronum cedere possunt; ita Praesules Cardinales aliarum Dioecesium decet ut suum Thronum nonnisi aliis eadem Cardinalitia dignitate ornatis cedant.

Canon 337, §5: Episcopus, licentiam concedens pontificalia exercendi in suo territorio, potest quoque permittere usum throni cum baldachino.

J'.R.C., 26 November, 1919, n. 4355, v, 3: Attento can. 337, §3, Codicis I.C., manetne in suo robore Decretum S.R.C., n. 4023, diei 12 Junii 1899, super iurc Episcoporum Dioecesanorum cedendi thronum alteri Episcopo? *Resp.* Affirmative.

## 487.—Episcopal Ring

*Are there in existence any rules regulating the practice of genuflecting on the part of the faithful when they kiss a bishop's ring?*

The custom of kissing the ring of a bishop has developed from the more ancient practice of kissing the hand of a priest in salutation—a natural sign of reverence since it is anointed at ordination, it handles the sacred species and distributes sacraments and divine blessings. In England, except when directed by liturgical rules and in the case of newly ordained priests, the custom has died out, but it continues in many Catholic countries.

In the case of bishops and other prelates who wear a ring, it is natural enough to kiss the ring instead of the hand. The episcopal ring is blessed at his consecration and signifies, in rather the same way as the marriage ring, that the bishop is bound or wedded to his diocese. The *Caeremoniale Episcoporum* still directs throughout that the hand of the bishop should be kissed and only refers to kissing the ring at the moment it is placed upon his hand by the assistant priest, "annulo prius et manu postea deosculatis".[1] The practice of kissing the ring always instead of the hand now appears to be universal and has been sanctioned by J'.R.C. The genuflection appropriate to this sign of reverence, during liturgical functions, offers no difficulty and is governed by rubrical and ceremonial directions.

It is the extra-liturgical use that our questioner has chiefly in mind. Pius X, 18 March, 1909, granted an indulgence of fifty days to anyone kissing the ring of a bishop or of a cardinal, and there is no restriction to liturgical occasions. It is, therefore, the wish of the Church that the practice should be encouraged.

The genuflection which usually accompanies it is an action which is really quite distinct from the sign of reverence implied in kissing the hand or the ring, and it is not, of course, required for gaining the indulgence. It is a recognition of the jurisdiction of the bishop or other prelate. Inasmuch as the whole question of this action, when performed extra-liturgically, is a matter of custom and etiquette rather than of law, it is not easy to formulate rules about it. Apart from local custom, it is more correct to kiss a bishop's ring without genuflecting when it is done by those who are not his subjects, for example, when a bishop is outside of his own diocese, particularly when the diocesan bishop is present. It is usual to genuflect

[1] II, viii, 22.

when kissing the ring of cardinals, because of their eminent dignity, but in Rome it is not usual out of respect for the person of the pope. Similarly, this sign of submission should be paid to an archbishop throughout his province and to a bishop within his diocese, unless the prelate himself does not desire it. Quite commonly the bishops in France, with an appropriate gesture, show that a genuflection is not required. On the same principle, in this country, a diocesan bishop does not expect certain senior clergy to genuflect. Inasmuch as it is a question of showing courtesy by doing what is usual, it is better to err on the right side, by showing too much respect rather than too little. It is the custom, in England, for the laity to genuflect when kissing the ring of all bishops and without regard to their possessing jurisdiction or not. It would, we think, be more correct if the distinction were observed, but the matter is not of sufficient importance to call for any change in established usage.

### 488.—Meaning of "Ordinary"

*How has it come about that this very common adjective is used as a noun to denote a bishop or other person in authority?*

(i) The adjective "ordinary", derived from *ordo,* meaning a regular methodical series, has acquired various shades of meaning; customary, usual, normal or regular arc the commonest, and it is in this sense that we speak of the "ordinary" confessor of nuns as distinguished from the "extraordinary" confessor. It became usual to drop the substantive to which this adjective was attached and to speak, for example, of those canons who fulfilled some regular duty as "ordinarii", exactly as in current usage we refer to a confessor as "the ordinary". But the commonest example of dropping the substantive is seen in the legal use, as in Scots law still, of referring to an ordinary judge as an "ordinary". This derivation of the word *ria* the adjective seems to be its correct history,[1] rather than an immediate derivation from the substantive as describing a person whose business it is to preserve law and order.

(ii) In ecclesiastical usage any person enjoying from his office some jurisdiction was styled "ordinarius"; hence the current term "ordinary jurisdiction", as in canon 197, §1. But it was naturally applied most of all to that ecclesiastical person whose jurisdiction was more universal than the rest, i.e. to the bishop of the diocese. In course of time other uses died out and "ordinarius" or "ordinarius loci" became proper to the bishops, as in certain Tridentine decrees; even in the decretals *index ordinarius* is found to refer nearly always to the bishop. This use remained in force until 1S8S, when a wider definition of the term, very similar to that in canon 198, is found in a document about dispensations issued by the Holy Office.[2] The meaning given to the word was, however, not strictly adhered to until the appearance of the Code which clearly defined it in canon 198, §1 : "In iure nomine *Ordinarii* intelliguntur, praeter Romanum Pontificem, pro suo quisque territorio Episcopus residentialis, Abbas vel Praelatus *nullius* eorumque Vicarius Generalis, Administrator, Vicarius et Praefectus

1 Cf. *Periodica,* 1924, XÏΠ, P· i.
» 20 Feb., 1888, n. 2; *Fontes,* n. 1109.

Apostolicus, itcmquc ii qui praedictis deficientibus interim ex iuris praescripto aut ex probatis constitutionibus succedunt in regimine, pro suis vero subditis Superiores maiores in religionibus clericalibus exemptis. §2. Nomine autem *Ordinarii loci* seu *locorum* veniunt omnes recensiti, exceptis Superioribus religiosis."

The best description of the nature of an "Ordinary" in canon law is, we think, that given by Beste in *Introductio,* p. 216: "Omnes, qui adeptione officii stricte dicti jurisdictionem ordinariam consequuntur, per se nominandi essent ordinarii; attamen Codex illam denominationem peculiariter tribuit et specifice reservat iis, qui simul iurisdictione in utroque foro pollent iure communi et in hoc canone (198) taxative enumerantur."

### 489.—Faculties of Ordinaries

*Are the faculties given by the Holy See to Ordinaries ever published? It would appear useftil and necessary, for a smooth working of the law, that priests should be aware of the powers possessed by their own Ordinaries, for example, over marriage dispensations.*

It may be useful but it is certainly not necessary that priests should be in possession of this information. The faculties arc granted to Ordinaries, to be used at their discretion, in dealing with cases brought to their notice; or in delegating the powers received, also at their discretion, to the clergy subject to their jurisdiction. A priest, let us suppose, petitions for a marriage dispensation, and it is addressed to the diocesan chancellor. If the Ordinary has not got the power to grant the favour requested, cither from the common law in certain instances, or by virtue of special faculties, he will have recourse to Rome in order to obtain it. Except, perhaps, that there will be some little delay if the matter has to go to Rome, the priest is not affected by the procedure. He awaits the arrival of the dispensation, and it is to him a matter of indifference whether it is granted by the Ordinary using his faculties or by having special recourse to the Holy See.

We agree that it may often be useful, and if the Ordinary is of this view and thinks that business will be facilitated by the clergy knowing what his faculties arc, it is open to him to communicate the information to them. This has always been the practice, for example, of the Ordinary of Bruges, whose *Quinquennial Faculties* arc set out and explained in *Collationes Brugenses.* In addition to those which an Ordinary often expressly publishes for the benefit of his clergy, various *formulae* may be seen in canonical books and periodicals. The latest formula for the American bishops is published by Bouscarcn in his *Digest,* II, p. 30, and he has considerately given the text in an English version. The current formula for the Irish bishops may be seen in *Irish Ecclesiastical Record,* 1948, LXX, p. 569. Wernz-Vidal, *Jus Canonicum, V,* p. 503, prints that part of the formula which concerns matrimonial impediments. We do not know of any published document expressly purporting to be the *Quinquennial Faculties* given to the English bishops; we may suppose—but it is no more than a conjecture—that it is similar to the Irish formula. Other faculties, in addition to those which arc granted quinqucnnially, are often obtained by Ordinaries, but these are not usually printed in any public source.



The formula most easily obtainable, and concerning which there has never been any kind of reticence, is that issued by Propaganda for missionary countries. The text, with a full commentary, is published by Vromant: *Jus Missionariorum, Facultates Apostolicae, Commentaria in Formulam Tertiam* (Dcscléc de Brouwer, Paris); and by Paventi: *Brevis Commentarius in Facultates S.C.P.F.* (Rome, Officium Libri Catholici).

To complete what information we have on this subject, *Apollinaris,* 193°, p. 33, reprints from *Acta Apostolicae Sedis* the decennial faculties granted for Latin America. The text of the faculties given, at that time, to Apostolic Delegates, may be read in *Jus Pontificium,* IV, 1924, pp. 37, 87, 128, and in *Periodica,* 1923, pp. 69 and 125.

### 490.—Episcopal Consecration

*At a Solemn consecration of a non-Catholic bishop it was stated that one of the assistant bishops was an iiold Catholic" himself validly consecrated. In such circumstances, is it possible that the consecration of a bishop is valid provided one at least of the consecrators is a bishop?*

Canon 954: Episcopus consecrator debet alios duos Episcopos adhibere, qui sibi in consecratione assistant, nisi hac super re a Sede Apostolica dispensatum fuerit.

*Const. Apost.,* Pii XII, 50 November, 1944; *A.A.S.,* XXXVII, p. 131. Utrum vero qui adsunt Episcopi co-operatores et consecratores sint, an testes dumtaxat Consecrationis, non omnibus satis exploratum est. . . . Licet ad Episcopalis Consecrationis validitatem unus tantummodo requiratur Episcopus idemque sufficiat, cum essentiales ritus perficiat, nihilominus duo Episcopi, qui ex vetere instituto, secundum "Pontificalis Romani" praescriptum, adsunt Consecrationi, debent cum eodem Consecratore, et ipsi Consecratores effecti proindeque Conconsecratores deinceps vocandi, non solum utraque manu caput Electi tangere, dicentes "Accipe Spiritum Sanctum", sed, facta opportuno tempore mentis intentione conferendi Episcopalem Consecrationem una simul cum Episcopo Consecratore, orationem quoque "Propitiare" recitare cum integra sequenti Praefatione, itemque, universo ritu perdurante, ea omnia submissa voce legere quae Consecrator legit vel canit. . . . facta opportuno tempore mentis intentione conferendi Episcopalem Consecrationem una simul cum Episcopo Consecratore. . . .

(i) The constitution of 50 November, 1944, though issued primarily in order to secure some uniformity of practice, does certainly confirm Gasparri's opinion[1] that the two episcopal assistants are consecrators: "unde non est ratio qua unus magis minister sit consecrationis episcopalis quam ceteri duo, sed coniunctim omnes sunt unica causa, seu unicus totalis minister consecrationis". Cappello's view, before the promulgation of this constitution, was that the principal bishop was the consecrator and the assistants merely witnesses.[2]

(ii) The intention of the assistant bishops, as the constitution defines

[1] *De Sacra Ordinatione,* §1088.
[1] *De Sacra Ordinatione,* §516.

it, is to consecrate together with the principal bishop, in much the same way as at the ordination Mass of priests, the newly ordained say the words of consecration during the Mass together with the bishop. At a lawful consecration carried out by three validly consecrated bishops, this intention offers no difficulty. In the above instance, however, since it is assumed that only one of the three, and this one not the principal consecrator, is a bishop, his intention cannot be that which the constitution defines, and it remains a moot point whether his act of consecrating suffices for validity. In our view it probably suffices, other things being equal, namely priestly ordination of the candidate,[1] valid matter and form, and a requisite general intention "faciendi quod facit ecclesia" undisturbed by any other prevalent intention. But the Church would not recognize the validity of a consecration so irregular and doubtful until it had been repeated at least conditionally.

## 491.—The Ordinary and Parochial Rights

*Certain canons reserve functions, such as extreme unction, to the parish priest. Has the local Ordinary a right to perform these functions without any reference to the parish priest?*

Canon 534, §1 : Episcopi rcsidentiales sunt ordinarii et immediati pastores in dioecesibus sibi commissis.

Canon 335: Ius ipsis et officium est gubernandi dioecesim tum in spiritualibus tum in temporalibus cum potestate legislativa, judiciaria, coactiva ad normam sacrorum canonum exercenda.

Canon 451, §1: Parochus est sacerdos vel persona moralis cui paroecia collata est in titulum cum cura animarum, sub Ordinarii loci auctoritate exercenda.

Although a parish priest has *ex officio* the care of souls in lais parish, with the right to exclude other priests when the law so determines, his power is subordinate to the jurisdiction of the bishop and of the Moly Sec. Whatever a parish priest may do in his parish may be done by the bishop in every parish of the diocese, and by the pope in every parish throughout the world. The doctrine is a necessary consequence of the fact that the episcopate has the care of souls *ittre divino,* and it is implied in the texts of the Pontifical for the rite of ordination and consecration. It was, in fact, not merely a subversion of ecclesiastical discipline, but a serious doctrinal error, when Jansenists taught that a parish priest's care of souls was enjoyed independently of the bishop.[2]

The commentators take this doctrine so much for granted that they do not usually refer to it at all when discussing the exclusive rights enjoyed under certain canons by parish priests. It is mentioned, however, by some of them in commenting upon canon 451, §1. Thus Bcste, *Introductio,* p. 285: . . episcopus est ordinarius totius dioecesis pastor, qui munus suum in singulis paroeciis immediate explere valet, etiam invito parocho, sive ipse per se sive per sacerdotem specialiter ad singulos casus deputatum . . ."

1 Cf. Cappello, *op. rit.,* §61, for the dispute on this point.
1 Cf. BouLx, *De Parocbc^* p. 88 *teq·*

The only limits to this episcopal right are that it should not be exercised arbitrarily to such an extent as practically to destroy the rights of the parish priest. This limitation is stressed, as regards the episcopal right to reserve cases, by Benedict XIV: . quorum (parochorum) jurisdictio, etsi ab episcopo pendeat, cique subjaceat, non est tamen delegata, sed ordinaria; nec potest, sine legitima causa, aut prorsus auferri, aut adeo imminui, ut fere inanis remaneat".* It is likewise mentioned in *S.C. Cone.,* 14 August, 1865, as regards the episcopal right to delegate a priest for assistance at marriage: "Esse validum: ceterum curandum, ne ob leves quaslibet causas huiusmodi deputationes fiant; salvis semper favore parochi emolumentis, si quae matrimonii occasione dari soleant."2

The objection that sustaining the rights of the Ordinary in this way means that a parish has got two heads, which is monstrous from a canonical point of view, is well met by S. Thomas, *Supplement,* VIII, 5, ad 5: . inconveniens esset, si duo aequaliter super camdem plebem constituantur; si autem inaequaliter non est inconveniens. Et secundum hoc super eamdem plebem immediate sunt et sacerdos parochialis, et episcopus, et papa; et quilibet eorum potest ea quae sunt jurisidictionis ad ipsum pertinentia alteri committere".

## 492.—Proper Ordinary

(λ) *If a Catholic man in the forces wishes to contract a mixed marriage, should the application be addressed to the army Ordinary or to the Ordinary of his civil domicile? (b) Is a foreign soldier, moving from place to place, considered to be "vagus" for the purpose of marriage? (c) Must the parish priest refer the marriage of a foreign soldier to some military ecclesiastical authority?*

(i) In the common law, the Ordinary who is competent to grant dispensations is the Ordinary of the person's domicile or quasi-domicile, and in the case of "vagus" the Ordinary of his actual dwelling-place. If there is more than one competent Ordinary, the Ordinary of the actual dwelling of the parties is to be preferred, and for parties in different dioceses the Ordinary of the woman is preferred in principle.3 These rules apply to marriages not contracted in danger of death or in the urgent circumstances of canon 1045, and no account has been taken of possible variations due to local law.

(ii) Therefore, in the common law for the above cases: *(a)* has a choice of cither Ordinary but should prefer that of his actual dwelling; *(b)* is not "vagus", since he has, at least, a personal military Ordinary; (r) must be referred to his military Ordinary, on analogy with the rule for all foreigners, *S.C. Sacram.,* 4 July, 1921.

(iii) It should also be observed that the Church desires marriages to be civilly as well as canonically valid and lawful, which entails, for all soldiers and particularly in the case of foreigners, a reference to their own civil or military authorities.

l *Synod Diotces.,* V, iv, 3; edit. 1844, XI, p. 121.
l *Fontes,* n. 4195.2.
* Cappello, *De Matrimonio,* §271.

### 493.—Ordinary's Death: Jurisdiction Ceasing

*When a diocese becomes vacant through the death of the bishop, may it be said that, in principle, the delegated faculties granted by him continue? I have in mind the faculties delegated to a priest as ecclesiastical superior of a community of religious.*

Canon 61: Per Apostolicae Sedis aut dioecesis vacationem nullum eiusdem Sedis Apostolicae aut Ordinarii rescriptum perimitur, nisi aliud ex additis clausulis appareat, aut rescriptum contineat potestatem alicui factam concedendi gratiam peculiaribus personis in eodem expressis, et res adhuc integra sit.

Canon 75: Resoluto iure concedentis, privilegia non extinguuntur, nisi data fuerint cum clausula: *ad beneplacitum nostrum,* vel alia aequipollcnti.

Canon 207, §1: Potestas delegata extinguitur, expicto mandato; elapso tempore aut exhausto numero casuum pro quo concessa fuit; cessante causa finali delegationis; revocatione delegantis delegato directe intimata aut renuntiatione delegati deleganti directe intimata et ab eodem acceptata; non autem resoluto iure delegantis, nisi in duobus casibus de quibus in canon 61.

From the last phrase in canon 207, §1, and the first in canon 61, it is clear that, in principle, the faculties delegated by the late bishop continue; unlike the powers of a vicar general, which arc not delegated but ordinary (canon 366, §1) and cease with the death of the bishop (canon 571), the faculties delegated to a priest as ecclesiastical superior of religious normally continue; the same applies, and is universally taken for granted, in respect to delegated faculties for hearing confessions granted to the clergy of the diocese. All these faculties continue for the period named in the rescript, usually till the 31 December of the year in which they are issued, when they will need renewal by the vicar capitular if the diocese is still vacant.

To this principle there are two exceptions mentioned in canon 61. The second is rare "potestatem . . . ct res adhuc integra sit", namely, when the rescript empowers the granting of a favour to certain named persons and the delegate has not yet begun to execute it. The first exception "nisi aliud ex additis clausulis appareat" is less rare, and it will be necessary carefully to examine the rescript of appointment in order to discover whether there is any clause therein which constitutes an exception to the above principle. It may contain such clauses as "ad beneplacitum Ordinarii pro tempore" or "usque ad revocationem", phrases which clearly leave the faculties intact notwithstanding the death of the delegating bishop. But one formula brought to our notice contains the restrictive clause "ad beneplacitum nostrum" which, in the teaching of canon 73 and of all the canonists we have consulted, based on c. 5 *de rescript,* I, 3 in VIo, is an example of the first exception mentioned in canon 61. The reason is that the will—the *beneplacitum*—of the bishop clearly expires with his death. Cf. Beste, *Introductio,* p. 116; Vcrmecrsch-Creusen, *Epitome* (1937), I, §176; Van Hove, *De Rescriptis,* §295; Cicognani, *Canon Law* (1934), p. 777.

Therefore, the faculties of an ecclesiastical superior of religious, contrary to the general principle, cease on the death of the bishop if they arc conceded with this clause. It is quite likely, in practice, that the priest superior will continue to use his faculties through not adverting to the clause; there will certainly be common error in such cases, and jurisdiction is supplied by the Church from canon 209.

### 494.—Election of Vicar-Capitular

*Should the election of a vicar-capitular be deferred until after the funeral of the late bishop?*

Canon 432, §1: Capitulum ccclcsiae cathedralis, sede vacante, intra octo dies ab accepta notitia vacationis, debet Vicarium Capitularem qui loco sui dioecesim regat et, si fructuum percipiendorum ei munus incumbat, oeconomum unum vel plures fideles ac diligentes constituere.

§2. Si Capitulum intra praescriptum tempus Vicarium aut oeconomum, quavis de causa, nullum deputaverit, deputatio ad Metropolitan! devolvitur; si autem ecclesia ipsa metropolitana fuerit vacans vel metropolitana simul et suffraganea, ad antiquiorem ex Episcopis suffraganeis.

Canon 162, §1: Salvis peculiaribus constitutionibus vel consuetudinibus, collegii praeses, statuto modo, loco ac tempore electoribus convenienti, convocet omnes de collegio. . . .

*I Westm.,* xii, i.: Defuncto igitur episcopo, post iusta funebria rite soluta, convenient canonici, praeside proposito, ac omnia peragent, quae a iure praescribuntur pro electione Vicarii Capitularis, quae infra octo dies locum habere debt.

In the common law of canon 452 there is no rule that the election must be deferred till after the funeral, though it is fitting that it should be. The Westminster law expressly states that the funeral must take place first, but docs not make it clear whether the eight days is to be computed from the day of burial. It is certainly the correct procedure to await the funeral of the late bishop before electing a vicar capitular, provided the funeral is not delayed beyond eight days from the time the chapter became informed that the see was vacant. If there is a delay of more than eight days it would appear that the election should take place before the funeral, notwithstanding the law of the Westminster council, in order to observe the common law of canon 452, §1. Otherwise there is some danger of the capitular election being supplanted by the metropolitan using the right conferred upon him by canon 432, §2.

### 495.—Two Vicars-General

*In a diocese which has two vicars-general, may a priest validly seek a favour from one which has been refused by the other?*

Canon 43: Gratia ab una Sacra Congregatione vel Officio Romanae Curiae denegata, invalide ab alia Sacra Congregatione vcl Officio aut a loci Ordinario, etsi potestatem habente, conceditur sine assensu Sacrae Congregationis vel Officii quocum vcl quibuscum agi coeptum fuit, salvo iure S. Poenitcntiariae pro foro interno.

Canon 44, §r: Nemo gratiam a proprio Ordinario denegatam ab alio Ordinario petat, nulla facta denegationis mentione; facta autem mentione, Ordinarius gratiam ne concedat, nisi habitis a priore Ordinario denegationis rationibus.

§2. Gratia a Vicario Generali denegata ct postea, nulla facta huius

dencgationis mentione, ab Episcopo impetrata, invalida est; gratia autem ab Episcopo denegata nequit valide, etiam facta dencgationis mentione, a Vicario Generali, non consentiente Episcopo, impetrari.

The question is not explicitly dealt with in the Code, since canon 366, §3, supposes that there is only one vicar-general in each diocese, "nisi rituum diversitas vel amplitudo dioecesis aliud exigat". Considerable information about the lawfulness of having more than one may be read in *Fontes,* n. 4285, 5.C.C., 6 May, 1893, which declared that Italian dioceses could not have two vicars-gencral "aeque principales". Assuming that the unusual practice exists, it will follow, in the case of the two exceptions mentioned in canon 366, §3, that the jurisdiction of each will be clearly limited, either to the faithful of different rites, or to a defined territory of a very large diocese, and the difficulty put in the above question cannot easily arise. But a plurality of vicars-general, outside of the two exceptions mentioned in this canon, docs not appear to be forbidden by the common law. The problem of the validity of obtaining a favour from one which has been denied by the other may then arise, and a solution must be sought, if possible, on analogy with the existing rules of canons 43 and 44.

It is the view of Dr Kinane, *Irish Ecclesiastical Record,* 1952, XXXIX, p. 304, quoted by Beste, *Introductio,* p. 112, that the favour is invalidly obtained from the second vicar-general unless its refusal by the first is mentioned, as canon 44, §2, decides in the case of the second request being addressed to the bishop. Van Hove, *De Rescriptis,* §174, does not altogether agree with this solution, but we think it is quite correct. Van Hove suggests, as a practical method for avoiding all doubts, that a bishop who constitutes more than one vicar-general should prohibit, under pain of invalidity, any recourse from one to the other.

### 496.— Vicar-General of Military Ordinary

*Does the law require or permit the military Ordinary appointed in various countries to have a vicar-general?*

Canon 451, §3: Circa militum cappellanos sive maiores sive minores, standum peculiaribus Sanctae Sedis praescriptis.

The question can be answered only by consulting the terms of the military Ordinary's appointment. His jurisdiction is personal, not territorial, and his assistant does not necessarily come within the rules of canons 366-371, which regulate the appointment and powers of a diocesan vicar-general. Moreover, since the prelate appointed is usually the vicar of the Holy See, it would seem to follow in principle that, on analogy with canon 309, his assistant would be merely a pro-vicar with delegated, not ordinary, jurisdiction. In the United States the military Ordinary has under his jurisdiction vicars-gencral for well-determined districts,[1] but we cannot find it stated that their jurisdiction is ordinary. The document which appointed the military Ordinary[1] for Italy in 1915 directed "ut unum vel plurcs sacerdotes suos Vicarios seu Delegatos nominare valeat, cum facultatibus necessariis ut in aliqua dissita militum statione vel in classi cius locum teneant", which

1 Beste, *Introductio,* can. 4ji, §5.

seems to imply not ordinary but delegated jurisdiction.[1] A similar arrangement was made for Belgium.[2] The document for the Italian military Ordinary in the recent war makes no provision for delegates or vicars-general.[3]

We know of only one document where the military Ordinary is directed to appoint a vicar-general who, whilst having personal jurisdiction and not territorial, enjoys all the powers of the diocesan vicar-general. In the appointment of the military Ordinary for Germany, 19 September, 1935, which implemented the terms of the concordat with that country, we read: "Berolini erit sedes Episcopi eiusque curiae. Deliget Vicarium generalem qui potestate ordinaria ei operam praestabit in omnibus quae ad spiritualem curam catholicorum in Germania militiae munera obeuntium pertinent. Vicarius generalis poterit munere quoque Officialis ad normam can. 1573, §1, fungi. . .

Our impression is that, unless the letters of appointment give the military Ordinary power to have a vicar-general with ordinary jurisdiction, the ecclesiastic chosen as his assistant is merely a delegate.

## 497.—Incardination by Tonsure

*A tonsured cleric studying in diocese X is, by reception of the tonsure, incardinated in diocese Y. He has origin and domicile in X but has not yet even t isited diocese Y. Who is the proper bishop for his promotion to minor orders?*

Canon 956: Episcopus proprius, quod attinet ad ordinationem saecularium, est tantum Episcopus dioecesis in qua promovendus habeat domicilium una cum origine aut simplex domicilium sine origine; sed in hoc altero casu promovendus debet animum in dioecesi perpetuo manendi iure iurando firmare, nisi agatur de promovendo ad ordines clerico qui dioecesi per primam tonsuram iam incardinatus est. . . .

*Code Commission,* 24 July, 1959, ad. II; *A.A.S.,* xxxi, p. 521. An Episcopus dioecesis, in cuius servitium laicus ad primam tonsuram a proprio Episcopo promotus fuerit, illi iure proprio et exclusive ordines conferre aut litteras dimmisorias dare valeat ad normam canonis 955, §1, licet ipse in eadem dioecesi domicilium nondum acquisiverit? *Xesp.* /Affirmative.

The reply of the *Code Commission* made public, though not in identical terms, a reply given privately to the bishop of Santa Fc, 7 December, 1931. There has been much doubt on the point owing to the clear definition of "episcopus proprius" in canon 956, and because the notions of "incardination" and "episcopus proprius" are not exactly the same. Cappello, writing in *Periodica,* 1931, XX, p. 128, gave the interpretation which is now, from the reply of the *Code Commission,* the only tenable one, and which was also the pre-Codc law from *S.C. Cone.,* 20 July, 189S, and 24 November, 1906.[5]

[1] *A.A.S.,* 1915, VII, p. 287.
[1] *A.A.S.,* 1915, VII, p. 46}.
[3] *A.A.S.,* 1940, XXXII, p. 280; *Apollinaris,* 1940, p. :6j.
[4] *Periodica,* 1935, XXIV, p. 218.
[6] *Fontes,* nn. 4307, 4330.

*The situation discussed above assumes that the candidate has received the tonsure, in which case it is now clear that the bishop of the diocese in which he is incardinated is exclusively the proper bishop for subsequent orders. But can you solve the problem when a student in the seminary of diocese X, who has no domicile anywhere, desires to be tonsured for the service of diocese Y. Who is the proper bishop for conferring the tonsure?*

Canon 92, §1 : Domicilium acquiritur commoratione in aliqua paroecia aut quasi-paroecia, aut saltem in dioecesi, vicariatu apostolico, praefectura apostolica; quae commoratio vel coniuncta sit cum animo ibi perpetuo manendi, si nihil inde avocet, vel sit protracta ad decennium completum.

Canon 955, §r: Unusquisque a proprio Episcopo ordinetur aut cum legitimis eiusdem litteris dimissoriis.

Canon 956: Episcopus proprius, quod attinet ad ordinationem saecularium, est tantum Episcopus dioecesis in qua promovendus habeat domicilium una cum origine aut simplex domicilium sine origine; sed in hoc altero casu promovendus debet animum in dioecesi perpetuo manendi iureiurando firmare, nisi agatur de promovendo . . . qui servitio alius dioecesis destinatur ad normam can. 969, §2. . . .

*Code Commission,* 17 August, 1919: Quisnam sit episcopus proprius pro ordinatione illorum qui nullum domicilium habent? *Kesp.* Prout dubium exponitur, est episcopus loci in quo fit ordinatio, modo tamen ordinandus praevie acquirat domicilium cum iuramento ad normam can. 956. (Private Reply. Cf. *Periodica,* 1923, XII, p. 73.)

The various problems which arise in determining the proper bishop for ordination have been, for the most part, solved by official and public Roman decisions, and the present difficulty seems to be the only serious one remaining. A qualified domicile is, under the law of the Code, essential for establishing the proper bishop for ordination: if the candidate has no domicile he has no proper bishop for this purpose. One solution of the difficulty outlined above is for the student to visit his future diocese Y, to acquire a domicile therein by staying one night, and to take an oath to remain; the bishop of Y will then be the proper bishop. This is a cumbersome method, especially if the two dioceses arc far apart, though it has frequently been adopted as being the only certain and safe procedure; bearing in mind the severe penalties of canon 2375.1, Ordinaries arc naturally averse to running any risk. There is always, of course, the remedy of seeking an induit, but this is also an unattractive procedure. Bouscarcn, writing in *Periodica,* 1940, p. 144, favours an induit as the only correct solution: ". . . si certo constet ordinandum nullum habere domicilium, et illud in loco ordinationis—loquimur de prima tonsura—acquirere nequeat, putamus adhuc verum manere quod citati auctores de illo casu docent, sc. restat ut per indultum apostolicum provideatur".

Bouscarcn, it will be noted, agrees that an induit must be obtained if the candidate is unable to acquire a domicile in the diocese where he is dwelling, namely the diocese in which the seminary is situated. The apparent obstacle to his so doing, assuming he has reached his majority, is that he cannot have the intention of remaining there permanently since it is his intention to be tonsured for the service of another diocese. If this obstacle can be surmounted, one will have a solution of the difficulty which avoids the other cumbersome procedures suggested.

The generality of canonists consulted take it for granted that the obstacle, in the present state of the law, cannot easily be surmounted, and wc know of only one writer who appears to teach the contrary. Dr Ileneghan, writing in *The Jurist*, 1943, p. 329, states that the candidate, when he reaches his majority, may acquire a domicile in the diocese in which the seminar}· is located; the bishop of that diocese is then the proper bishop for conferring the tonsure, which he does under an agreement with the bishop of the diocese for the sendee of which the candidate is destined, by which, on receiving the tonsure, the candidate is incardinated in the distant diocese, whose bishop is henceforth the only proper bishop for promoting him to orders.

This is a reasonable solution, provided the intention of remaining permanently can be harmonized with the intention of becoming incardinated elsewhere, and we are offered no solution of this difficulty. It is scarcely covered by the clause in canon 92, §1, "si nihil inde avocet", according to the best canonists. Thus Michiels, *De Personis,* p. 106: "... requiritur vero ut *bic et nunc,* vi voluntatis praesentis, intendatur commoratio in determinato loco *in indefinitum* protrahenda, ita ut discessus futurus nondum sit determinatus et volitus . . .". Accordingly, until this very attractive solution of the problem is more firmly established, it is our opinion that the candidate must either acquire a domicile in his future diocese or seek an induit dispensing from the law of canon 955, §1.

## 498.— Dispensation from Interstices

*From canon* 978, §2, *the legal intervals between the reception of various orders may be disregarded "prudenti episcopi iudicio". Jf a dispensation is desired, may the petition be addressed to the bishop ordaining with dimissorials or must it go to "episcopus proprius"?*

Canon 978, §2: Interstitia . . . nisi necessitas aut utilitas Ecclesiae, iudicio Episcopi, aliud exposcat.

*S.C. Sacram.,* 15 August, 1909, *Fontes,* n. 2098: Utrum Episcopus gaudens induito conferendi Ordines extra tempora et non servatis interstitiis, eo uti possit erga alienos subditos, suorum Ordinariorum dimissorias habentes. *Resp.* Affirmative.

Canon 6.4: In dubio num aliquod canonum praescriptum cum veteri iure discrepet, a veteri iure non est recedendum.

The usual commentators, without adverting to this point, merely repeat the words of the Code. Cappello, however, interprets "episcopus" in this canon as "episcopus proprius",1 but we cannot find any other author who holds this view. 11c may be correct, for the interstices allow time for the candidate's deliberation, and in *S.C. Sacram., ζη* December, 1950, it is "episcopus proprius" or someone acting on his mandate who must form a judgement on the candidate's fitness.

Nevertheless, though it is the safer course to petition "episcopus proprius", there seems no reason for departing from the prc-Code rule on the point, as given by *S.C. Sacram.,* 15 August, 1909. The petition may be addressed, if desired, to the ordaining bishop even though he is not

1 *De Serra Ordination*, $4*9'3*

"episcopus proprius". This is the solution given by Beste, *Introductio,* p. 527; Wernz-Vidal, *Ins Canonicum,* IV, §223; Sipos, *Enchiridion,* p. 466; Ayrinhac, *Legislation on the Sacraments,* p. 347.

### 499.— Age for the Priesthood

*Do local Ordinaries usually enjoy faculties for dispensing a deacon for the purpose of receiving the priesthood before the canonical age?*

Canon 975 : Subdiaconatus ne conferatur ante annum vicesimum primum completum; diaconatus ante vicesimum secundum completum; presbyteratus ante vicesimum quartum completum.

*Formula* ***IV*** (Beste, *Introductio in Codicem,* 1944, p. 976), ***Ex*** *Cong. Relig.:* Dispensandi, etiam pro religiosis exemptis, super defectu aetatis canonicae ad s. Ordinem presbyteratus, scilicet *(a)* super eiusdem defectu usque ad duodecim menses, dummodo ordinandi a suis Superioribus litteras dimissoriales acceperint et ceteras habeant qualitates a sacris canonibus requisitas ac praesertim curriculum theologicum expleverint ad normam canonis 976, §2, C.I.C. (Z›) super eodem defectu etiam ultra duodecim menses at non ultra sedecim, dummodo alumni ne gaudeant vel indigeant alia apostolica dispensatione, servatisque ceteris conditionibus ut sub lit. *(a.)* The same faculty was given for European bishops in Formula III issued in 1932, printed in *Periodica,* 1932, p. 221.

*Facultates Apostolicae . . . Ordinariis missionum.* (Vromant, *Ius Missionariorum,* 1930, p. 54, η. XX.) Dispensandi, gravi tamen de causa, cum utriusque cleri diaconis super defectu aetatis decem et octo mensium, ut, eo non obstante, ad s. Presbyteratus ordinem promoveri possint, dummodo idonei sint et dimidiam partem quarti anni cursus theologici rite, secundum Codicis praescriptiones can. 976, absolverint.

We have no knowledge of a faculty granted, outside those territories subject to *Propaganda,* by which a secular cleric may be dispensed from the law of canon 975. But this does not mean to say that the faculty is not granted. *formulae* arc often modified, and Ordinaries obtain faculties in addition to those granted in some *formula.* Application for a dispensation should be made to the Ordinary, who will, according to his discretion, use what faculties he enjoys, or have recourse to the Holy See, or use the general faculty granted to him by canon 81.

According to Cappello, *De Sacra Ordinatione,* §407, the Holy Sec is not accustomed to grant a dispensation beyond eighteen months, except for the gravest and most urgent reasons. The faculty to dispense is often delegated to Ordinaries but not usually beyond twelve months, and only for the priesthood.

Nor, according to the same writer, are faculties usually conceded for dispensing the age for receiving the subdiaconatc and diaconatc; they are not included in any *formula* we have examined.

### 500.— Exeat

*What steps should a priest take who, for some lawful reason, wishes to obtain an "exeat" from his own diocese in order to enter the service of another?*

The process is properly called "excardination" and "incardination", and the matter is ruled by canons 111-117 of which the following phrases bear on the question put:

Canon 112: . . . ut clericus alienae dioecesis valide incardinctur, a suo Ordinario obtinere debet litteras ab eodem subscriptas excardinationis perpetuae et absolutae; et ab Ordinario alienae dioecesis litteras ab eodem subscriptas incardinationis pariter perpetuae et absolutae.

Canon 116: Excardinatio fieri nequit sine justis causis, et effectum non sortitur, nisi incardinatione secuta in alia dioecesi, cuius Ordinarius de eadem priorem Ordinarium quantocius certiorem reddat.

It is, therefore, a question of an absolute and perpetual transfer. Frequently, priests obtain permission to take some work in another diocese, lasting perhaps for a lifetime, without giving up their own diocese of ordination; they remain canonically subject to their bishop of incardination. If an absolute severance is required, it is entirely a matter of arrangement between the priest and the respective bishops. A bishop would justly refuse a request of this kind if he required the services of the priest in his own diocese, and permission might be given more easily in the case of a priest ordained on the title of his patrimony, than in the case of one educated on diocesan funds and ordained "ad titulum servitii dioecesis".

An example of a document granting excardination is given by Mothon, *Formulaire,* p. 18: "Dilecto nobis in Christo N.N. Nos considerantes tuam in Domino utilitatem, et rationes quas ad hoc Nobis exposuisti, salvis jure praescriptis circa ordinationis tuae titulum, praeviis etiam de tuis natalibus, vita, moribus, etc., mature perpensis, ... et causa novae incardinationis tuae ad Episcopum Dioecesis N.N. directis, ad tuam petitionem et instantiam, ex Nostra dioecesi N presentium virtute te excardinamus excardinatumque declaramus. In Nomine Patris . . . etc. Datum sub sigillo, etc. . . . N.N. Episcopus N.

## §2. CLERICAL OBLIGATIONS

### 501.— Canonical Obedience

*A newly ordained secular priest is appointed by his Ordinary to a teaching office in thejunior seminary, work which is to him uncongenial. Whilst being willing to obey "ad maiora mala praecavenda", he would like to know whether be bas the canonical right to be appointed as assistant priest to a parish. He would not, in any case, claim the right, but an explanation ofhis obligations would be acceptable.*

Canon 127: Omnes clerici, praesertim vero presbyteri, speciali obligatione tenentur suo quisque Ordinario reverentiam et obedientiam exhibendi.

Canon 128: Quoties et quandiu id, iudicio proprii Ordinarii, exigat Ecclesiae necessitas, ac nisi legitimum impedimentum excuset, suscipiendum est clericis et fideliter implendum munus quod ipsis fuerit ab Episcopo commissum.

It is evident from the terms of canon 128 that a "legitimate impediment" entitles a cleric to be relieved of duties committed to him, for example, his inability to teach. But a judgement ' a legitimate impediment

rests, in the first place, with the Ordinary, as also does the judgement concerning the necessity of the duties imposed. Maroto gives some interesting details about the wording of this canon in the preparatory schemata: *"vera* necessitas" and "necessitas *vel evidens utilitas"* were rejected, the first because it appeared to limit the powers of the Ordinary, the second because it extended them beyond what was considered just.[1] The obligation of accepting duties imposed by the Ordinary is expressed in this canon as a general law for the first time, and it is based on previous decisions of Roman congregations which interpreted more strictly the Tridentine laws.[2]

The priest in this case could rightly, and without any suspicion of being wanting in his obligations, make known to the Ordinary his reasons for desiring a change. He could also, no doubt, use his right of recourse against the Ordinary's decision, but in ecclesiastical as in civil law recourse to litigation is a gross folly except in matters of the gravest moment. The Ordinary, likewise, may use his right, and enforce his decision by appropriate censures, against which the subject may appeal. There is no question here of these extreme courses being taken, but assuming that the priest's request for a change is not granted, it remains to show that he has a canonical obligation to remain in the position assigned to him.

The obedience required of a cleric is called *canonical* because it is determined by ecclesiastical laws. A previous *schema* gave a different wording to canon 128: "eique parendi fideliter in omnibus quae ipse (Ordinarius) ad normam sacrorum canonum praeceperit". This was rejected because it was capable of being interpreted in the sense that the Ordinary's right to obedience, promised at ordination, is restricted to those matters expressly mentioned in the canons. Instead, we have the law as it stands. It is not necessary to find a legal text, determining that the Ordinary has the right, for example, to order a cleric to teach in the seminary; it suffices that there is no law entitling a cleric to refuse this work: "Inde fit quod necessaria non sit expressa concessio canonum ut Ordinarii hoc vel illud imponere possint, sed e contrario omnia possunt intra illorum fines, quae canones non vetant."[3] The word *munus,* taken in conjunction with the words *Ecclesiae necessitas,* obviously includes not only the service of the parish churches, but such duties as convent chaplaincies, visitation of hospitals, and teaching in seminaries.

The principles upon which this canonical obedience is due are of various kinds. The widest of all is the power of jurisdiction inherent in the Ordinary's office which demands obedience from those subject to him. There is also the obligation of remaining faithful to a promise solemnly made at ordination; it is not a vow, but many rightly sec in it an obligation of religion, from the circumstances in which it is made, in addition to the obligation of fidelity. In certain cases, provided for in canons 117, n. 3, 956,981, these general obligations are strengthened by a special *oath.*

For the vast majority of secular clerics, ordained on the title "servitii dioec sis", there is also a bond of*justice* arising from the quasi-contract by which they bind themselves to serve the needs of a diocese in return for support. Some hold that this ordination title gives wider powers to the Ordinary, in determining objectively the kind of work that shall be under-

[1] *Institutiones,* I, n. 555.
[1] Claeys-Bouuacrt, *Manuale luris Canonici,* I. η. 285.
[1] Maroto, *op. rit.* η. 552.

taken, than would be the case in regard to clerics ordained on their patrimony. Whatever may be the case in practice, we are of the opinion that there is no basis in the law for this distinction, and that the difference between the two categories is solely the subjective one, namely the obligation of justice.

### 502.—Episcopal Mass Precept

*In a ceriain diocese there exists a fixed equal stipend for the celebrant, deacon and subdeacon of a solemn Requiem Mass. It is understood by tbe faithful that tbe celebrant will apply the Mass for the soul of the deceased. In addition, an episcopal law requires the deacon and subdeacon, who are almost always in sacerdotal orders, to say a private Requiem Mass for the soul of the deceased. What exactly is tbe nature of the obligation arising from this episcopal precept?*

The obligation arises directly and of its nature from the duty of obedience to ecclesiastical authority. It cannot be denied that the Ordinary has the right of imposing an obligation of this kind; it is merely an extension of the principle by which the Church requires parish priests and others to offer Mass "pro populo" on certain days. The objection that the Church cannot command an internal act is met by rejoining that this act is not purely "internal" but "mixed", and the authors all recognize that the bishops have the power of adding to the ordinary obligations of the common law of the Church, for some special reason and in special circumstances.

It is also recognized that, in practice, this power is rarely used.[1] But there cannot be any reasonable doubt that the right exists, in spite of the various arguments that can be adduced against it. If it is objected that the right is liable to be abused, the same applies to every use of authority on the part of ecclesiastical and other superiors. The subject can seek redress by any lawful means. Moreover, all the authors are careful to note that this particular episcopal power should be used sparingly, lest the clergy suffer an unjust diminution of their rightful dues. "Verum episcopus sobrie omnino procedere debebit in injungendis his oneribus, maxime si sacerdotes tenui salario fruuntur, ne cos privet facultate pro sustentatione ex stipendiis Missarum complementum quaerendi."[2]

In the circumstances of this case it is necessary to add that, indirectly, an obligation "ex justitia" might sometimes arise. The donors of the triple stipend for a solemn Mass may be well aware of the diocesan law and may make their offering precisely because they desire three Masses to be said.

### 503.—Retreats

*How often is a priest bound to make a retreat? Is there an obligation to attend tbe monthly recollection?*

(i) The common law prescribes a yearly retreat for religious (canon 595)

[1] Gasparri, *De Esubaristia,* I, §6j8; Cappello, *De Sacramentis,* §696; *Irish Ecclesiastical Record,* 1922, XIX, p. 308.

[2] *Apollinaris,* 1930, III, p. )ij.

and for seminarists (canon 1367.4). Canon 126 directs for the secular priesthood a retreat at least every three years, at the place and time fixed by the Ordinary.

Provincial law nearly everywhere orders a retreat every two years, as in *I ïï^estm.,* xxiv, 7: "saltem biennio".

The word "saltern" in the Code and the provincial law indicates the minimum, and the commentators are agreed that the Ordinary may require a greater frequency: in some dioceses, as in Bruges, a yearly retreat is a diocesan law. In most English dioceses the law is observed by attending every other year, and in determining the time and the place the Ordinary is carrying out the directions both of the Code and the provincial law.

(ii) There is no law requiring a monthly recollection, but there is the counsel of the Vicar of Christ which priests cannot easily disregard: "piam consuetudinem quam veluti Exercitiorum brevem geminationem dixeris, recollectionem scilicet menstruam vel saltem tertio quoque mense instituendam exixe suademus".1

### 504.— Obligation of the Rosary

*Is there an obligation for all clerics to recite the rosary daily, and, if so, is the customary choice of mysteries on certain days also of obligation?*

Canon 12$: Curent locorum Ordinarii . . . ut clerici omnes quotidie . . . Deiparam Virginem mariano rosario colant.

*S.C. Indulg.,* 1 July, 1839; *Fontes,* n. 5012, ad 5: Estne libera electio mysteriorum, quae recoli debent in recitandis coronis B.M.V., aut danturne dies stricte determinati pro tali vel tali genere mysteriorum recolendo, ita ut tali dic determinato recoli debeant mysteria gaudiosa, tali die dolorosa, tali die gloriosa? *Resp.* Affirmative quoad primam partem; quoad vero secundam, invaluit consuetudo, ut per gyrum cuiuslibet hebdomadae singula mysteria ita recolantur, nempe gaudiosa in secunda ct quinta feria, dolorosa in tertia et sexta, gloriosa tandem in Dominica, quarta feria et Sabbato.

Leo XIII, *Ubi Primum,* 10 October, 1898, ad xiii: Sodalitatum rectores sedulo curent . . . retenta consuetudine huic Sanctae Sedi probata, ut per gyrum cuiuslibet hebdomadae singula mysteria ita recolantur: Gaudiosa in secunda et quinta feria, etc. (ut supra).

(i) The word "curent" occurs often throughout the Code and, being somewhat elastic in meaning, is variously interpreted by the commentators. Its force was explained by the *Code Commission,* 12 November, 1922, regarding canon 1451, which directs Ordinaries to take care (curent) that patrons should accept spiritual benefits in place of their right of presentation: "Verbum *curent* cit. canonis declarat ab Ordinariis locorum suadendum esse patronis ut loco iuris patronatus quo fruuntur, aut saltem loco iuris praesentandi, spiritualia suffragia etiam perpetua pro se suisvc acceptent; ct hinc patronos, praesertim ecclesiasticos, optime se gerere si hisce suasionibus obsequantur." It would be incorrect to suppose, from this reply, that "curent" throughout the Code means "persuade", but it seems to us that

1 *Mtns Nostra,* 20 December, 1929.

this is the meaning to be assigned to it in canon 125. The recommendation is for the Ordinary directly, for the clergy indirectly: it is the mind of the legislator that clerics should recite the rosary daily, but in failing to do so they violate no ecclesiastical law in the strict meaning of the word.

(ii) The same word is used in *Ubi Primum* in recommending the Rosary Sodality to retain the custom of apportioning the rosary to certain days of the week. But it is not a law, nor even a condition for gaining the rosary indulgences. It is a custom approved by the Holy See which should normally be retained, unless there is some reason for departing from it.

## 505.—Clergy Examinations

*Does the law of canon* 130, *obliging all priests to be examined in the sacred sciences for three years after ordination, apply (a) to the regular clergy, (b) to priests who are continuing their studies at Oxford or Cambridge? To what extent are both these categories of priests bound to attend the diocesan conference cases?*

Canon 130 declares that all priests are bound by its provisions unless exempted for just causes by the local Ordinary. But from canon 590 priests belonging to religious institutes are bound to an examination for five years after ordination unless excused for grave reasons by their superiors. The *Code Commission,* 14 July, 1922, ruled that religious with care of souls, who had undergone the examination prescribed for them in canon 590, were not bound by canon 130. In cases where the Ordinary of the place thinks that the examination of canon 590 has been neglected, his remedy is to have recourse to the *Sacred Congregation of Religions.* Even apart from this official declaration of the law, it is fairly evident that religious priests are not bound by the law of canon 130; an indication is to be seen in canon 131, which expressly includes certain religious in the law requiring attendance at diocesan conference cases. The words "omnes sacerdotes" of canon 150 refers, therefore, solely to secular clergy.

Exemption from attendance at the junior clergy examination may be granted by the Ordinary for just causes, and local legislation frequently exempts certain categories of clergy. Thus, in Strasbourg, those who have obtained a doctorate in theology arc exempt, those who have obtained a licentiate are partially exempt.[1] But no junior clergy are exempt by the common law, no matter what their degree of knowledge or their occupation may be. On the contrary, a decree of the *Consistorial Congregation,* 30 April, 1918, declares that priests attending secular universities should not be excused from taking the clergy examination: "Qui, pro hac norma, ad Universitates laicas frequentendas destinabuntur sacerdotes, si novensiles sunt, ab examinibus, quae in can. 130 ct 590 praescripta sunt, minime eximantur, quin potius eadem subire vel strictius jubeantur, ne, profanarum scientiarum studio abrepti, ecclesiastica studia praetereant, contra praescriptum can. 129."[2]

Those bound to attend the diocesan conferences, as defined in canon 131, are: "turn omnes sacedotcs saeculares, tum religiosi licet exempti

[1] *Documentation Catholique,* 1934, XXXII, col. 1018.
[2] *A.A.S.,* 1918, X, p. 237.

curam animarum habentes et etiam, si collatio in eorum domibus non habeatur, alii religiosi qui facultatem audiendi confessiones ab Ordinario obtinuerunt". Secular priests attending universities are bound to appear unless excused by the Ordinary; religious priests are bound if they have the care of souls. The *Code Commission,* 12 February, 1935, defined "care of souls" in this connexion as applying also to religious priests who are acting as assistants in parishes, or as chaplains dependent upon a parish priest in hospitals and pious establishments, if, according to canon 476, §6, they are taking the place of the parish priest and assisting him in his entire parochial ministry. Before this decision it used to be held by some that religious who were parish priests came under the law, but not those who were only assistants or curates. Finally, religious priests with diocesan faculties from the Ordinary are bound to attend the conference cases, unless they are already held in the religious house. The sanction attached to this law is in canon 2377: "Sacerdotes contra praescriptum can. 131, §1, contumaces, Ordinarius pro suo prudenti arbitrio puniat; quod si fuerint religiosi confcssarii curam animarum non gerentes, eos ab audiendis saecularium confessionibus suspendat."

### **506.—**"Scribere" in Canon 1386, §1

*The law of canon* 1386, §1, *which forbids the clergy to write on secular subjects without the permission of their Ordinaries, does not express very clearly what is forbidden. Does it include, for example, an occasional letter to the press? If not, what is the usual interpretation of this law?*

Canon 1386, §1: Vetantur clerici saeculares sine consensu suorum Ordinariorum, religiosi vero sine licentia sui Superioris maioris et Ordinarii loci, libros quoque, qui de rebus profanis tractent, edere, et in diariis, foliis vel libellis periodicis scribere vel eadem moderari.

The law of canon 1386 is quite distinet from that of canon 1385, which requires all writings of a religious or moral character to be submitted to previous censorship, i.c. to a judgement concerning the orthodoxy of what is written. The clergy are bound, in addition, to obtain permission from their Ordinaries before publishing works which are of a secular character requiring no previous censorship. The law of the Code is, in fact, stricter than the previous legislation in art. 42 of Leo XIH's constitution *Officiorum et munerum,* and in the anti-modernist legislation of Pius X.[1] The requisite permission is occasionally given by an Ordinary to all clerics under his jurisdiction;[2] or, more usually, it is given for the habitual use of the cleric who requests it; but the Ordinary may, if he desires, limit his permission to each occasion.

(i) An examination of the commentators on the common law reveals a certain divergence in defining what is meant by "scribere".

*(a)* There is agreement amongst them that permission is required by a cleric who writes habitually for the press, and some hold the view that the law is to be understood exclusively in this sense. Thus Cappello, *Summa*

1 Cf. Brys in *Coltat. Brugen.,* 1953, p. 409.
1 Sipos, *Enchiridion,* p. 7J2, n. 12.

*Juris Canonici,* II, n. 770: "Attenditur collaboratio habitualis vel saltern frequens."

(/>) Others, more correctly in our opinion, include even one contribution which is of some importance, particularly of religious importance. Gemcot, *Institutiones Theologiae Moralis,* 1, η. 460: "quaedam alicuius momenti vel habitualiter". Vermeersch-Crcusen, *Epitome,* II, n. 728: "saltem habitualiter vel de argumento peculiaris momenti religiosi vel moralis". Wernz-Vidal, *Ius Canonicum,* IV, §715, n. 34: "intelligenda videtur de scriptione habituali seu frequenti aut etiam minus frequenter de argumento peculiaris momenti religiosi vel moralis". Blat, *Commentarium,* III, n. 282: "scribere saltem ad modum correspondcntium seu collaboratorum, etsi ratione verborum etiam semel videretur sufficere". Davis, *Moral and Pastoral Theology,* II, p. 443 : "contributions notable or frequent, to newspapers, eta".

(r) *De minimis non curat lex.* Those commentators who have more carefully examined the subject in all its bearings point out that the law would become absurd if it were made to apply to the slightest and most trivial writings. By comparing §1 of the canon with the following §2 it is apparent that the prohibition against writing anything, "quidpiam", applies only to anti-religious or immoral journals. Wouters, *Manuale Theologiae Moralis,* II, n. nij: "Una alterave minor elucebratio in diariis, etc., non videtur voce scribendi comprehendi . . Augustine, *Commentary,* VI, p. 442: "To say that the publication of a notice of a church festival or parish event, or funeral, requires the special consent of the Ordinary or religious superior would render the law ridiculous." The same applies to a priest who wants to write to the papers to say that he has heard a cuckoo or seen a snowdrop.

But it is necessary, we think, to bear in mind that a series of short contributions might be considered, taken all together, to constitute notable matter, even though each one singly is of no consequence. Sipos, *Enchiridion, loc. cit.:* "Verbum 'scribere' cooperationem significat, quae iam repetitis etiam minoribus lucubrationibus habetur." Brys, *loc. cit.:* "prohibitio . . . nunc ad omnem cooperationem alicuius momenti extenditur, quae jam v.g. repetitis etiam minoribus lucubrationibus habebitur". Coronata, *Institutiones,* II, p. 319: "Unumve alterumve articulum minoris momenti in diariis inserere non videtur dici posse *in diariis scribere* in sensu Codicis, et proinde licentia in his casibus non videtur requiri, sed pro habituali scriptione seu collaboratione." The point to be considered is whether a series of short contributions is a matter of some moment when taken all together; announcements of parish events arc clearly not of this description, whereas a protracted correspondence might easily be of more consequence than one single and longer contribution.

It seems to us that the interpretation of the common law given by Fr Davis, "contributions notable or frequent", best describes the meaning of "scribere" in this context.

(ii) It is open to local ecclesiastical authorities to make the general terms of the common law more particular and definite for clerics subject to their jurisdiction. The English bishops in 1918, and more recently in their Low Week meeting of 1940, called the attention of the clergy to the law of canon 1386, without, however, defining its terms. Occasional references to the subject may be seen in certain diocesan regulations. For example, the *Decreta et Praecepta* of Liverpool (1923) and of Nottingham (1924), after

quoting the canon, give the following direction: "Thus it is clear that before writing to the Press on ANY subject a priest must obtain the consent of the Ordinary, or of his delegate, who, in such cases, is the Dean of the district."

The directions of *IVth Malines Provincial Council,* n. 232, are much more precise and are often quoted by canonists as a wise and practical application of the common law: "Declaramus autem praeviam Ordinarii licentiam non requiri ad nuntiandum quemvis vitae quotidianae eventum *{faits divers},* vel aliquod bonum opus ab Ordinario approbatum commendandum, vel aliud quid minimi obiter inserendum, sed eam requiri (i) ut quis clericus vel religiosus habitualiter aut repetitis vicibus in diario vel libello periodico scribat; (ii) ut respondeat calumniis aut contumeliis quibus in aliquo diario forte impetitus fuerit; (ili) ut vel unum articulum de re religiosa, sociali vel politica actu agitata aut peculiaris momenti conscribat. Si vero propter rei urgentiam existimaverit quis sibi fas esse licentiam praesumere, articulum sine mora, addito auctoris nomine, ad Ordinarium mittat. Profecto Ecclesia huiusmodi statuto nullatenus intendit cleri operam scientificam, litterariam, socialem, aliamve religioni vel civitati proficuam, cohibere aut quovis modo impedire, sed tantum eandem debitis cautelis circumdare."

## 507.— Canon's Robes

*What is thefoundationfor the custom by which, with the local Ordinary's permission, canonsfrom other dioceses are allowed to wear their canonical choir dress outside their own dioceses'?*

The rule is that the Ordinary cannot dispense from the general laws of the Church, even in a particular case, unless this power has been explicitly or implicitly conceded to him, or recourse to the Holy See is difficult, and there being grave harm in delay the case is one in which the Holy See is accustomed to dispense.[1]

The law relating to the matter is in canon 409: "Vestem choralem aut specialia insignia capitularia adhibere possunt in tota dioecesi in qua est Capitulum, sed, reprobata contraria consuetudine, non extra dioccesim, nisi vel Episcopum comitetur vel Episcopum aut Capitulum repraesentent in Conciliis aliisve similibus." The canon is one amongst a dozen or so which expressly reprobate contrary custom. The custom may have existed in this country, as it did in France, before the Code, but it is difficult to see on what title it may be continued: ". . . vestis choralis aut specialia insignia adhiberi non possunt extra dioccesim, nisi in casibus in canone taxative recensitis. Ea contraria consuetudo, quae ex. c. in Gallia plenissime vigebat et per ipsius S. Rit. Congr. authenticam declarationem (7 April, 1832) aliquatenus confirmata erat, aperte reprobatur: quare (cf. can. 5) omnino supprimenda est et amplius introduci non potest".[2] Apart, therefore, from the occasions explicitly mentioned in canon 409, the custom is unlawful. If an Ordinary gives the permission it must be assumed that this power has been conceded to him by induit.

1 Canon 81.
1 Toso, *Commentaria Minora,* ad can. 409.

*Is it right in Jingland for a canon to wear the cassock, with pink buttons and piping all day long? I query the practice because I am told it is a choir dress, and, therefore, as unsuitable in the dining-room as would be a surplice.*

The cassock (vestis talaris) as described above is part of the choir dress of canons in most of the English dioceses. Amongst the useful collection of documents relating to English chapters, *Statuta Capitidaria,* 1907, we find its description on page 36 in a document from the Holy See dated 14 May, 1858, together with the warning: "custodiantur ecclesiasticae praescriptiones circa tempus, ac loca, quibus vestium Canonicalium ornamenta adhiberi, ac gestari queant". The different choir dress conceded, for example, to Westminster is mentioned in a document of 6 January, 1901, page 44, together with the warning: "ut ea utantur dumtaxat in choro, quatenus huic intersint . . .". It is certain that the choir dress may not be used as an ordinary garment about the house. Some dioceses have no special choir dress. The canons wear a cassock and surplice and, inasmuch as the cassock is identical with any other cassock, it may be worn, of course, for general purposes. If the canon's choir cassock is not identical, as is the case mentioned in the *Statuta,* page 5 5, a dubium arises which may be solved, in our opinion, according to the terms of canon 136, §1: "Omnes clerici decentem habitum ecclesiasticum, secundum legitimas consuetudines et Ordinarii loci praescripta, deferant. . . ." In our view, a black choir cassock with red piping may not be worn outside of choir unless the Ordinary so directs or unless it is permitted by lawful custom. We think it is lawful in any given diocese if, as appears often to be the case, all the canons have always followed the custom. In cases of doubt the matter should be referred to the Ordinary.

## 508.—Capitular Low Mass

*Should the canons assisting in choir at a capitular low Mass stand and kneel as the rubrics direct for a sung Mass?*

Canon 413, §r : Quodlibct Capitulum obligatione tenetur quotidie divina officia in choro rite persolvendi, salvis fundationis legibus.

§2. Divinum officium comprehendit psalmodiam horarum canonicarum et celebrationem cum cantu Missae conventualis.

J'.R.C., 4 March, 1902, η. 4089.1 : Quum iuxta rubricas statutum sit, in Missis feriarum Adventus, etc., genuflcctcre debere omnes in Choro, dicto per Celebrantem *Sanctus,* usque ad *Pax Domini* inclusive: quaeritur utrum hoc idem tenendum sit quoties praefatae Missae celebrentur sine cantu? *Resp.* Affirmative.

Though the capitular Mass should in principle be sung, induits are common which permit a low Mass instead, in which case the induit may direct what should be done on the occasion. Failing any explicit directions, inasmuch as the common law approximates such Masses to the rules of a sung Mass, as in the number of collects said and the omission of Leonine Prayers,[1] we think that the chapter assisting should be guided by the same

[1] N. 5697.7 and n. 4177.2

principle. Schaefer rightly draws this conclusion from n. 4089.1 for the conventual low Mass in the churches of regulars: "Missa conventualis, sive cantetur sive legatur, censetur esse Missa solemnis. . . . Assistentes in choro Missae lectae conventual! genuflectere et surgere debent eodem modo ac si Missa esset sollemnis cum cantu."[1] A conventual Mass, whether in a regular church or in a cathedral, is sub ect to much the same rules, and we think accordingly that the answer to the above question should be in the affirmative.

## 509.—Honorary Canons

*Must the number of honorary canons in any cathedral chapter be restricted in proportion to the number of titsdar canons?*

Canon 406, §1: Episcopo, non autem Vicario Generali, nec Vicario Capitulari, ius est canonicos ad honorem nominandi sive dioecesanos sive extra-dioecesanos cum consilio capituli cui canonicus est adseribendus, sed Episcopus raro et caute hoc iure utatur.

§3. Canonici ad honorem extra dioecesim in qua nominati sunt degentes, numero sint tertia parte minores canonicis titularibus.

(i) The decrees upon which this common law of the Code is based regard the honorary canon with grave suspicion and dislike: . dum sacerdotes aetate ac omni virtutum genere venerandi amant nesciri et pro nihilo reputari, iuniores et qui parum adhuc aut nihil in Ecclesia bonum contulerunt, dignitates appetant. .." "tanquam tirones gloriosi veteranorum insignia atque ornamenta virtutis praemia appetentes".[2] The complaint is chiefly against the practice of priests obtaining honorary canonries in dioceses other than the one to which they belong, and §2 of the canon requires, therefore, under pain of nullity, that the consent of their proper Ordinary must first be obtained; in addition, the number of honorary externs must be restricted to two-thirds of the number of titular canons from §3.

This definite restriction does not apply to the number of honorary canons appointed by their proper Ordinary from amongst the clergy of the diocese; the law recognizes the Ordinary's right but directs it to be used rarely and with caution. Bouix, following the opinion of the older canonists, suggests that the number should be about one-fifth of the titular canons,[3] but we cannot find a post-Code writer who discusses the question.

(ii) The First Westminster Provincial Council, held in 1852, altogether prohibited the appointment of honorary canons in the newly erected dioceses.[4] A modification of this rule was obtained from *Propaganda,* 7 July, 1904, which permitted titular canons desirous of resigning because of age or infirmity to be made honorary canons, and the number of such in each diocese was never to exceed three.[5] We believe that the practice of limiting the honour to retiring titular canons continues still in many dioceses, and the number as given in the current *Catholic Directory* does not, for the most

[1] *De Religio/i/* (1940), §380.
[2] *Fonte/,* nn. 622 and 4265.
[3] *De Capituli/* (185a). p. 156.
[4] *Decretum* XI, 11.
[5] Cf. *Statuta Capitularia* (1907), p. 51; *Middle/brougb Statute/* (1953), η. 29.

part, exceed three. It depends, no doubt, on the induits, customs and statutes of each body, as well as on the will of the Ordinary, and if in some instances the ruling of 7 July, 1904, is extended beyond the number of three, or honorary canons are appointed who are not retiring titular canons, it must be assumed that the practice is justified, since it is not at variance with the common law.

### 510.—Priest Factory Workers

*It is being discussed abroad, especially in France, whether it would not be well for the clergy to work like any other men in factories, in order to reach more effectively the masses of the people. Is there any official pronouncement or direction on the subject?*

The project is obviously contrary to the canon law. It has not, we believe, been very widely or seriously suggested, but the experience of a few priests who, during the war, led this manner of life has been considerably advertised.

The following is a minute of the conclusions reached by the assembly of French Cardinals and Archbishops, 25 and 26 June, 1946, relating to this new movement within the French Church. *Documentation Catholiquel* received the statement from the episcopal Secretariate:

"The desire felt by certain priests and seminarists for closer contact with the masses of working people certainly reveals most excellent intentions. Episcopal authorization could properly be sought by certain members of the clergy desiring to go through a stage of this character, for the purpose of acquiring more exact information about the conditions under which the people to whom they minister are working. The assembled bishops think that no objection could be brought against such proposals if made in exceptional circumstances, to be carried out in well-defined conditions, and by clergy possessing the requisite qualities of character and virtue.

But attention must be directed to an error which is liable to enter into such projects, and to the dangerous illusions which they may encourage.

The error consists in not keeping quite distinct the apostolate of the clergy and that of the laity, or in substituting the one for the other. ... In these days the difference between the two domains of influence exercised by the two apostolates has been made very precise. Just as confusion is caused by substituting a lay apostolate for that of the clergy, so also is it caused by an error which is exactly the opposite. In this temporal world the laity have a mission to perform which is proper to them. Priests must respect this lay vocation, but they must also remember their own sublime vocation. A priest is man of God—*homo Dei*—a man of prayer, a man dedicated to the spiritual life, a man appointed to teach and sanctify others by his ministry. What the laity expect in their priests is the witness of a life wholly devoted to the things of God; what they want from them is the spiritual assistance which will animate and guide their own lay apostolate in the world.

It must also be observed that the persons who arc most qualified to speak about Catholic Action amongst the workers arc unanimous in declaring

l i September, 1946.

that the labouring masses do not want their priests to be engaged in manual labour.

It is most desirable for the clergy to be drawn more intimately into the lives of the working population amongst whom they are living, but this will be effected by the priestly example of a life of poverty, disinterested and self-sacrificing, as Pius XI teaches in the encyclical *Divini Redemptoris.* If more than this seems required, one must beware of the serious illusion of imagining that, for the purpose of leading men to God, it is necessary to adopt their manner of life and to have personal experience of the varying conditions in which they are living. The experience of manual labour, obtained by certain priests in extraordinary circumstances during the war, and endured by them with such admirable and supernatural generosity, cannot be repeated in the normal conditions of life, nor cited as an example to imitate in the perilous conditions of modern times.

What the laity require from the priest is simply that he should be every inch a priest."

## 511.— Clerical Dress

*A priest belonging to a diocese where the cassock is not the usual outdoor dress is dwelling for a time in a foreign diocese where it certainly is. Is he bound to conform to the local usage and wear a cassock? If be is not bound, may be do so if he desires?*

Canon 136, §1 : Omnes clerici decentem habitum ecclesiasticum, secundum legitimas locorum consuetudines et Ordinarii loci praescripta, deferant. . . .

Canon 13, §2: Legibus conditis pro peculiari territorio ii subiiciuntur pro quibus latae sunt quique ibidem domicilium vel quasi-domicilium habent et simul actu commorantur, firmo praescripto can. 14 (de peregrinis).

*S.C. Cone.,* 28 July, 1931; *A.A.S.,* 1931, XXIII, p. 336: . . . decentem habitum ecclesiasticum publice semper, non excepto tempore aestivarum vacationum, deferant, habitum scilicet, quem legitima consuetudo et Ordinarii loci praescriptum in propria regione ordini clericali congruentem agnoverint.

*S.C. Consist.,* 31 March, 1916; *Fontes,* n. 2093: Clericum a propria dioecesi in aliam migrantem posse ibi vestem dioecesis suae retinere, quamvis diversam ab ea quae in loco est praescripta, dummodo sit una ex duabus a Patribus Quebccensibus probata: idque usquedum domicilium vel quasi domicilium ibidem non ineat. Sicut in ieiunii et abstinentiae lege aliisque similibus fas est peregrinis loci usum sequi, ita pariter salvam esse cuilibet clerico potestatem se conformandi usibus loci ad quem transmigrat, quin ab Ordinario suo hac una de causa reprehendi vel puniri valeat.

A variety of usage is recognized in all these legal texts, particularly in the most recent one, *S.C. Cone.,* 28 July, 1931. The approved custom, and therefore the law, in most English-speaking countries, prescribes a form of clerical dress which, however it may vary in style and length, is certainly not a cassock. Cf. Dr McReavy's proof of the point in *The Clergy Review,* 1937, XIII, p. 82.

Owing to the existence of English together with French customs in various parts of Canada, the dispute which arose there was settled by *S.C. Consist.,* 28 July, 1931, but the directions given on tint occasion, though

primarily addressed to Canadian clerics, arc based on principles of the common law. It is on these principles that we hold the view that a cleric reciting the breviary should conform to the calendar of the place where he has a diocesan quasi-domicile.1 By acquiring a quasi-dorrucile (canons 91, 92) in an alien diocese a cleric becomes subject to its laws, and is therefore bound to conform to the local usage in clerical dress. Accordingly, an English priest attending a University in France should wear a cassock; a French priest in similar circumstances in England should not.

From canon 92, §2, a quasi-domicile is acquired, "commoratione . . . quae vel coniuncta sit cum animo ibi manendi saltem ad maiorem anni partem, si nihil inde avocet, vel sit reapse protracta ad maiorem anni partem". Residence in a place without acquiring a quasi-domicile therein, in the case of a priest who has a quasi-domicile elsewhere, places in him the category of "peregrini" (canon 14, §1), concerning whom difficulties are always arising, since he is subject to those local laws "quae ordini publico consulunt". Fortunately, there is no great difficulty in the present question. Following the ruling given for Canada by the *Consistorial Congregation* in 1916, we may hold that the local regulations on the form of clerical dress do not normally affect public order. Therefore, on an analogy with other laws, a priest residing in an alien diocese for any reason, but not acquiring a quasi-domicile therein, may please himself and either retain the dress he wears at home or conform to that of the local clergy.

*Two types of cassock are worn by priests in this country, the one with and the other without a cape. Which is the more correct? Or are both types tolerated?*

Canon 136, §1: Omnes clerici decentem habitum ecclesiasticum, secundum legitimas locorum consuetudines et Ordinarii loci praescripta, deferant. . . .

Canon 811, §1: Sacerdos, Missam celebraturus, deferat vestem convenientem quae ad talos pertingat et sacra ornamenta. . . .

***IV*** *Westm.i* xi, 12: Formam illam (habitus) commendamus, quae paucis abhinc annis a clero sacculari adhiberi coepit. Domi vero habitum talarem, vel, si magis placet, eum qui ^*imarra* appellatur, cum bireto, induere eos maxime decet.

The cassock is not the legitimate customary clerical outdoor dress of clerics in this country, but the Westminster decree declares it should be worn in the house, and the common law everywhere requires it at the celebration of Mass. The question, therefore, is concerned with the correct shape of this cassock worn at home or at Mass.

Mgr Ward in *The Sequel to Catholic Emancipation,* II, p. 272, relates that the Roman capclcss cassock with sash was introduced by certain priests as an external sign of their loyalty to the 1 loly Sec, and as a corrective to what they considered the singular and non-Roman style of caped garment in vogue. He points out, however, that the caped cassock was expressly authorized by Pope Pius IX for the English clergy. "Tell them," the Pope is reported to have said to Wiseman, "to wear the same dress as I do, only black instead of white."

1 Q. 59°.

The sash accompanying this caped cassock has never, we think, been the custom except amongst the Oblates of St Charles and some other communities. But it is certainly the custom of numbers of priests to use a non-caped cassock and, it appears, this kind is becoming commoner than the caped sort—for one thing, it is less expensive. The law is observed, on the occasions when a cassock is ordered, by wearing either sort, unless the Ordinary has determined its shape more exactly.

## 512.—The "Rabat" of the French Clergy

*Why do the clergy in many parts of France wear a "rabat" in place of a Roman collar?*

The *rabat (rabattre*—to bring down) favoured by the French clergy seems to be, in its present form, an ornament which takes the place of a collar. All collars have this in common: that they have developed from the neck extremity of the shirt, this being in its simplest and most useful form a downward fold of the linen arranged so as to protect the coat from being soiled by perspiration. Ornamentation of this collar has developed in all directions, from soft texture or lace to a wide, protruding, starched circular band, making the wearer's head appear like the head of St John the Baptist on a dish.

Naturally, ecclesiastical discipline took the form of discouraging and forbidding worldly fashions in collars. Clerics quite properly should be content with a simple fold of the linen, and there is a decree of Urban VIII in 1624 insisting that this *collarino* is a distinctive mark of the clergy and must not be worn by the laity. It is what we now call the Roman collar, and the clergy who still favour the use of a soft linen band folded over a stock preserve more the original idea of a collar than do those who prefer one already folded and starched. Religious institutes of clerks regular, founded about the time of the decree of Urban VIII, still wear the collar in the form of a small simple fold, with the opening in front.

In France, both before and after the Revolution, the Roman custom was resisted. Portraits of ecclesiastics reveal large flowing collars, often ornamented, and covering the shoulders and back of the wearer, but it was gradually reduced to the form of a "bib", a piece of linen hanging just below the neck. We are not aware of any satisfactory explanation why the *rabat* ceased to be wholly of white linen; such may still be seen in France, but the usual *rabat* of the secular clergy is black with white edging. In at least two French dioceses, Moulins et Montauban, the Roman collar is now of obligation, but for the most part the *rabat* is retained because it is traditional.[1]

In days when the English clergy were educated abroad, they naturally followed the French custom, and the development of their neck-gear may be studied in the scries of portraits which illustrate the historical works of Bishop Ward. The last example of a *rabat* (white) is seen in the portrait of Bishop Gibson (1790-1821), V.A. of the Northern District, in Vol. II, p. 60, of *The Eve of Catholic Emancipation.* In the same volume may be seen

[1] Cf. *I'Ami du Ctergi,* 19:9, p. 106; 1927, p. 493.

examples of the usual Roman collar, and of neck-gear which is indistinguishable from that worn by laymen of the period.

## 513.—Housekeepers

*Are there any regulations about the age and other qualities of housekeepers in presbyteries?*

Canon 133, §2: Eisdem (clericis) licet cum illis tantum mulieribus cohabitare in quibus naturale foedus nihil mali permittit suspicari, quales sunt mater, soror, amita et huiusmodi, aut a quibus spectata morum honestas, cum provectiore aetate coniuncta, omnem suspicionem amoveat.

§3. Iudicium an retinere vel frequentare mulieres, etiam illas in quas communiter suspicio non cadit, in peculiari aliquo casu scandalo esse possit aut incontinentiae afferre periculum, ad Ordinarium loci pertinet, cuius est clericos ab hac retentione vel frequentatione prohibere.

The common law of canon 133 does not define the age meant by "aetas provectior". Some, relying on the "aetas superadulta", one of the canonical causes in petitioning for dispensation from impediments, suggest that 24 might be taken as a suitable age.[1] Usually the canonists reckon that 40, more or less, is meant in this context.[2]

Quite often the common law is made more definite by local legislation. The Westminster Councils are content to speak in general terms and thus describes the qualities which are to be desired: "Famulae autem quae presbyteris serviunt sint provectioris aetatis, modestia, prudentia vitacque illibatae experimento probatae, ut canonum sanctiones serventur. Ideoque summopere caveant sacerdotes a quibusdam foeminis, quae dominando, pauperes Christi despiciendo, discordias susurribus seminando, vere fiunt missionis pestes."[3] Many priests would agree that there are persons circulating in this country as priests' housekeepers who are "pests" in the sense of this conciliar text, although undoubtedly of canonical age.

Diocesan laws occasionally determine the age exactly, in which case the law is binding upon all priests serving that diocese. Thus *Lancaster Statutes* (1935), n. 18: "The senior servant or housekeeper of a priest should ordinarily be not less than 40 years of age. Si quae talem aetatem non habeat, licentia episcopi obtineri debet, antequam admittatur." *Middlesbrough Statutes* (1933), n. have an exactly similar provision. *Malines Statutes* (1924), n. 55, 2, decide the age as 30, except for certain near relatives.

If there is no local legislation on the point, we think the age of 30, which is the lowest we have discovered in any legal text, may be taken as a safe rule. But there is no obligation to accept it; "aetas provectior"—the canonical age—is only one of the qualifications required by the law, and if it is not settled by local enactment the reason is that the legislator has seen fit to leave a decision to the good sense of the clergy, who might say with St Paul in I Cor. ix, 5: "Have we not power to carry about a woman, a sister, as well as the rest of the Apostles, and the brethren of the Lord, and Cephas?"

[1] Augustine, *Commentary,* I, p. 81.
[2] Wcmz-Vidal, *Ius Canonicum,* II, n. 111; Cheys-Bouuacrt, *Manuale,* I, n. 289.
[3] *IV Wtsfm.,* xi, 3.

## 514.—Eleven O'Clock Rule

*In my young days as a priest, rectors ofparishes insisted on the observance of this rule. What is the text of the law, and is it still inforce 1 Also, what modification, if any, is permitted in "summer time"?*

*IV Westm.,* XI, ro: Ad presbyterium, seclusis necessitatis vel charitatis officiis (sacerdotes), sub nocte maturius redeant.

*Local Synodal Decree·.* Seclusa necessitate, nemo hora undecima noctis tardius ad presbyterium redeat. (Thus in *Lancaster Statutes* (1945), η· 35; *Leeds Synods* (1911), n. 2; *Middlesbrough Statutes* (1933), n. 5.)

Canon 33, §1 : In supputandis horis diei standum est communi loci usui; sed in privata Missae celebratione, in privata horarum canonicarum recitatione, in sacra communione recipienda et in ieiunii vel abstinentiae lege servanda, licet alia sit usualis loci supputatio, potest quis sequi loci tempus aut locale sive verum sive medium, aut legale sive regionale sive extraordinarium.

At the Low Week meeting of the bishops, 23 April, 1868, n. 29, it was agreed that "without interfering with any rule that may exist in different dioceses, requiring priests to return home before 11 p.m., the said hour be the latest at which they shall be required to be at home. The penalty to be inflicted for neglecting such rule is at the discretion of each bishop''.1 In the Fourth Westminster Provincial Council, which was held in 1873, the hour was not defined. Accordingly, the eleven o'clock rule is not a provincial law.

Resolutions agreed upon by the bishops of a country, in accordance with canon 292, §1, whilst not being provincial laws, arc for the securing of a due measure of uniformity, and it is for each bishop to promulgate the rule agreed upon in his own diocese, whether in synod or not; it is then a diocesan law, and must be interpreted, particularly in regard to penalties, according to the terms of canon 14. In addition to the three examples of diocesan law quoted above, similar enactments arc contained, though not in identical terms, in *Liverpool Synod* (1945), n. 23, and in the laws of most dioceses. They remain in force until they arc lawfully modified or abrogated.

It is evident, from the terms of canon 33, §1, that the eleven o'clock rule, wherever it exists, must be interpreted according to the reckoning of time usual in the district; the faculty of using other computations is extended only to the obligations mentioned in the canon.

## 515.—Bearded Clerics

*I can find nothing in the Code prohibiting priests from wearing beards. Many religious are bearded and certain popes are always represented thus in their portraits. Is it a convention rather than a strict law that priests should be shaven?*

The best text-book treatment of this matter is in Wernz-Vidal, *lus Canonicum,* II, §99, and the commentators deal with it briefly under

1 This information was communicated to us from a diocesan curia; wc arc not aware of any source in which it is printed.

canon 136, §1: "Omnes clerici decentem habitum ecclesiasticum, secundum legitimas locorum consuetudines et Ordinarii loci praescripta, deferent, tonsuram seu coronam clericalem, nisi recepti populorum mores aliter ferant, gestent, et capillorum simplicem cultum adhibeant." Fr Thurston has two interesting columns on the history of the subject in the *Catholic Encyclopedia*, II, p. 362.

Hardly any evidence is available as to the practice in the early Church, but local councils in the West, during the fourth and fifth centuries, ordered clerics to shave their beards, and the legislation, becoming universal, remained in force throughout the Middle Ages until the Renaissance, when short beards began to be worn; portraits of Paul III show' the pope with a patriarchal beard.[1] St Charles Borromeo was greatly concerned in suppressing the new fashion, and very considerable disturbances arose in the French Church: interventions of parliament, revolts of cathedral chapters against bearded bishops and appeals to the Holy See all show the depth of feeling which existed on a matter which, one would think, should be regarded as a triviality.[2] After the First World War, particularly in France and Bavaria, some priests grew beards, doubtless owing to army habits, and claimed the right to do what the Code nowhere forbids, the instructions of their Ordinaries notwithstanding. A reply given by the *Sacred Congregation of the Council* to the Ordinary of Breslau, 10 January, 1920,[3] denied that the Code permitted clerics to wear beards, and sustained the authority of Ordinaries in forbidding the practice. "An Codice Juris Canonici data sit quibusdam clericis saecularibus libertas gestandi barbam, et, respective, an Episcopis competat prohibitionem hucusque vigentem in suo robore sustinere pro dioecesibus suis? *Resp.* Negative ad primam partem, affirmative ad alteram." This decision, which was accompanied by an extensive official commentary, repeats an instruction given by the apostolic nuncio in Bavaria, 16 June, 1863, and the whole document is the best source for the current law on the subject. It is unnecessary to give the arguments of this commentator; it amounts to a proof that the obligation of shaving the beard, which is founded in customary law, is not abolished by canon 6.6 nor by canon 30, and is, therefore, still in force.

For us in this country there is no need to argue on these lines, since we have fortunately in Hz IF?r/w., xi, 13, an explicit written law on the subject: "Decernimus insuper omnino servandum esse a viris ecclesiasticis morem Romae usitatum, non nutriendi capillos nec in genis nec in mento."[4] It is, accordingly, the law that clerics should not wear beards; but, like any other positive law, it may be dispensed for a proportionate cause, especially of a medical character.

Various mystical reasons for this prohibition arc given by the older writers, none of them at all convincing. The constitutions of certain regulars, as the Capuchins, require a beard to be worn as a mark of austerity, and priests both secular and regular on foreign missions wear beards cither because the conditions of their life demand it or in order to meet the preju-

1 Shaving was not the custom in the East, and. in fact, the controversialists numbered amongst their grievances that the clergy of the West shaved their beards.

* Cf. *VAmi du Clergé,* 1928, XLV, p. 844.

' *A.A.S.,* 1920, XII, p. 43.

4 *Decreta IV Cone. Prov. IV'estm.,* p. 233; see p. 306 for the Bavarian instruction of 1863; also *Leeds Synods* (191 x), Decretum VII, p. 8,

dice of natives. At one period the purpose of the law was to prevent ecclesiastics aping the style and manners of the secular world. But there is little force, if any at all, in this point of view today. It is certainly true that a growth on the upper lip might have unpleasant consequences when consuming the Precious Blood, but the ultimate reason for the law must be sought in the distinction between cleric and layman; a shaven face is one of the accepted external signs of the clerical state, and is part of the "habitus ecclesiasticus" of clerics in the Western Church.

## 516.—Clamorous Hunting

*I should be grateful for a ruling on the force of the clause in canon* 158, *which refers to the clergy and hunting·. "Venationi ne indulgeant, clamorosam antern nunquam exerceant." In particular, I would wish to know whether the canon here allows a distinction between, on the one hand "following hounds" or "riding io hounds", and on the other "hunting hounds oneself". If this is so, I understand that the former would be considered lawful so long as it were not indulged to excess, and the latter {which involves speaking to hounds, blowing a horn, hallooing, etc., and which is therefore clamorous'} would be always unlawful. Davis, "Moral and Pastoral Theology", Vol. IV, p.* 301, *would seem to follow this view, but Slater, "Manual of Moral Theology", Vol. Il, p.* 22, *possibly because of compression, does not refer to it but merely says of clerics, "They are expressly forbidden ... to hunt with hounds." It is difficult to obtain a ruling on this point, because, for the most part, moral theologians appear to be ignorant of the distinction between hunting hounds {which alone is properly hunting) and following hounds. Put this distinction is universal among hunting people and, if we ignore it, it becomes difficult to justify the practice of many priests in Ireland, of a few in England, and of innumerable ecclesiastics—and I believe even popes—in the past. Finally, do the decrees of the Councils of Westminster go beyond the Code in this respect?*

(i) There is clearly a distinction in the Code between clamorous hunting and what, for want of a better word, is called "quiet" hunting, but it is not easy to define each sort. Benedict XIV distinguishes them having regard to the size of the animal hunted and not merely to the accompanying noise: ". . . duo sunt venationum genera; alia siquidem est clamorosa, alia quieta; illa magno armorum, canum, accipitrum apparatu, et tumultu exercetur, ut apri, cervi, et maiores ferae capiantur; altera solis laqueis, et retibus, aut etiam armis, sed paucis, adhibitis canibus, ad occidendum lepores, vulpes, aliasve minores feras, sine ullo strepitu instituitur".[1] Hunting big game in Africa is certainly clamorous; fishing, snaring, or walking out with a gun and a couple of dogs is not.

The prohibition against clamorous hunting is a negative precept—"nunquam". With regard to the quiet kind clerics are forbidden to "indulge" in it—the word carries the meaning of frequency or excess: "nunquam licet clericis exercere clamorosam venationem; et ipsis prohibitum est quietae et simplici venationi indulgere, h.e. studiose incumbere, frequenter scilicet et diu".[2] This is the usual interpretation and it is

[1] *De Synodo Diotctsana,* xi, io, n. 8; ed. 1844, p. 427.
[1] Brys in *Cotlat. Brugtn.,* 1935, p. 285.

supported by a decision *S.C. Cone.,* 11 June, 1921/ which rules that a bishop could not punish with suspension *l.s.* those clerics who took part in hunting which was not clamorous; as the consultor of the congregation concluded in his commentary: "agitur enim in casu de venatione per se licita et nonnisi per accidens prohibita, propter scandalum praesertim fidelium''.

(ii) Whether riding to hounds is "clamorous" or not is a matter of opinion. We incline to the view that it is, and whilst perceiving the difference between hunting hounds and riding to hounds, we think that there is a moral unity in the whole field of riders. One cannot ride to hounds unless someone hunts hounds, and the latter being "clamorous" the former partakes of this quality. In all matters of this kind we are accustomed to judge an action from its character in the common estimation of men. If fox hunting is considered wrong because cruel to animals, everyone riding to hounds would rightly be considered as sharing in the cruelty. Similarly, if fox hunting, on the part of those hunting hounds, is considered a clamorous hunt, everyone riding to hounds shares in the clamour.

(iii) But the view is tenable that fox hunting, without any distinctions, is not clamorous, and the decrees of the Maynooth (1927) Plenary Council rather support this interpretation: "Prohibemus ne intersint venationibus, quae fiunt cum equis et canibus, nisi ob rationes speciales id Episcopus permittat."[2] The previous canon repeats canon 138 of the Code. The Council makes no distinction between hunting and riding to hounds, the whole sport being regarded as not clamorous, or not certainly so, not prohibited *in se,* and therefore to be allowed with the permission of the Ordinary.

(iv) If it is decided, with or without distinctions, that fox hunting is not clamorous, the lawfulness of moderate participation therein will chiefly depend on whether it causes scandal to the faithful. The official commentator on the decree of 1921 was of the opinion that non-clamorous hunting caused scandal in England and France. A French writer[3] ventured, with great respect, to question this view as regards certain parts of France. In Ireland no scandal, it seems, is caused. In our experience we think it causes scandal in England, but it may well be that, in parts of the country of which we have no experience, priests may take part in fox hunting without scandal, especially if they arc not engaged in parochial work.

(v) Its lawfulness, supposing there is no scandal, will be judged finally in the light of local legislation. *I* IFcj-/., xxiv, 2, and *IV* IF>r/.,xi, 9, forbid it in these terms: "Abstineant . . . a venatione clamorosa quae equo et canibus fit." In our view the Councils regard fox hunting as clamorous hunting, and the text is declarative of what the common law forbids. It is open to our questioner to interpret this text in the light of his distinction, but we do not find that Fr Davis favours it. I Ic writes: "The noisier sort of hunting is that in which numerous hounds and horses are employed, such as the modern fox hunt, not the quieter sorts. . . . To follow a clamorous hunt as spectator is not to hunt, though it may give rise to scandal in some countries. It docs not do so in England if done only occasionally." If these words arc held to favour the distinction, it would be on the assumption that all the members of a hunt, except those who make the clamour of horn-

» *A.A.S.,* XIII, p. 498.
«N. 48, §2; p. 5L
*'I'Ami du Clergé,* 1927, p. 58.

blowing and hallooing, are merely spectators. Could a rider to hounds rightly be called a spectator?

To sum up, fox hunting is forbidden to clerics in our view, and riding to hounds is as much fox hunting as hunting hounds. But the opposite view *remoto scandalo* is tenable. The safe course is to seek a decision from the Ordinary in individual cases.

## 517.—The Censure of Canon 2388, §1

*What is the procedure for obtaining absolution from this censure, enabling the person absolved to communicate "more laicorum"?*

*S. Poenit., 4* May, 1937. declaratio super decreto quod incipit "lex SACRI COELIBATUS" DIEI 18 APRILIS, 1936

Evulgato per Commentarium Officiale Apostolicae Sedis (Vol. XXVIII, p. 242) Decreto, quod incipit "Lex sacri coelibatus" dici 18 aprilis 1936, quo absolutio ab excommunicatione de qua in can. 2388, §1, quando agatur de sacerdote qui, matrimonio civiliter attentato, ad cor dein reversus, ad participationem sacramentorum more laicorum petat admitti, data quidem fide de absoluta perfectaque in posterum continentia perpetuo servanda, quamvis tamen ob gravissimas rationes cessare non valeat a cohabitatione sub eodem tecto cum suae desertionis complice, Sacrae Paenitentiariae Apostolicae, excepto casu periculi mortis, reservatur, non defuerunt nec desunt Canonistae et Moralistae qui docuerint ac doceant casum hunc nihil differre a casu aliarum censurarum, quae in casibus urgentioribus remitti possunt sub quibusdam conditionibus et clausulis a quocumque confessario vi can. 2254.

Haec interpretatio, a praefati Decreti nedum sensu sed et littera prorsus absona, nullo modo defendi potest, eo praesertim quia expresse edicitur absolutionem de qua agitur *"ab ipsa tantum Sacra Paenitentiaria Apostolica,* servata speciali procedendi forma et sub peculiaribus quibusdam cautelis et conditionibus ab eadem Sanctitate Sua patefactis ac praescriptis", concedi posse.

Nihilominus, ad omnem, si quae adhuc forte superesset, dubitationem penitus auferendam, Ssmus Dominus Noster, in audientia infrascripto Card. Paenitcntiario Maiori dic 10 aprilis anni currentis impertita ad rem opportune interrogatus, suprema Sua auctoritate declarandum et, quo solet modo, publici iuris faciendum mandavit, hanc esse mentem Legislatoris, scilicet: Absolutionem a censura, de qua supra, ita esse Sacrae Paenitentiariae reservatam ut nemo unquam, excepto casu periculi mortis, ab ea absolvere possit, non obstante qualibet facultate, sive per can. 2254, §1, sive per privilegium, sive denique per aliud quodeumque ius ceteroquin concessa.

The text of the decree, of which this declaration of the *Sacred Penitentiary* is an explanation, deals with the condition of a priest who has incurred the censure of canon 2388, §1, "in casu impossibilitatis cessationis cohabitationis". The Church may permit him to receive the sacraments *more laicorum,* "data fide de absoluta pcrfectaquc in posterum continentia perpetuo servanda", but each case must be presented to the *Sacred Penitentiary,* except *in periculo mortis.*

Some authors, commenting on the decree of 18 April, 1936, held that the use of the familiar canon 2254. "Pro casibus urgentioribus", was not excluded in this case.[1] Others held that it was excluded.[2] The *Sacred Penitentiary* has decided that canon 2254, §r, cannot be used, and (except in danger of death) previous recourse is necessary before absolution from this censure may be given in every case contemplated by the decree, namely, where separation is morally impossible.

In what class is the censure, in these circumstances, to be placed? The provision concerning absolution *in periculo mortis* makes it resemble the *specialissimo* class, but these are not excluded from the operation of canon 2254, §1. The simplest way is to regard it in the same way as any other censure. None may be absolved except "iniunctis de iure iniungendis". In this case the law requires previous recourse to the *Sacred Penitentiary,* a requirement which is not attached to other censures of the *simpliciter* class. Perhaps, if other censured crimes become liable to this procedure, the canonists will class them apart. For the moment it does not appear necessary.

The best commentary on the whole legislation of *Dex Sacri Coelibatus,* and of legal points incidental to it, is by Dr J. Rossi, *Decretum Lex Sacn Coelibatus,* published by Berruti, Via S. Dalmazzo, 24, Turin.

### 518.—Oath Taken by a Priest

*Canon* 1622, §i, *directs a priest intervening in any way in a marriage trial to take the oath touching his breast. Does this rule apply to every occasion when priests take oaths?*

Canon 1622, §1: Quotiescumque iusiurandum praestatur . . . semper emitti debet praemissa divini Nominis invocatione et a sacerdotibus quidem tacto pectore, a ceteris fidelibus, tacto Evangeliorum libro.

*S.C. Sacram.,* 15 August, 1936, art. 96 :... exquirat ab eo iusiurandum de veritate tota et sola dicenda, tacto sacro Evengeliorum libro, vel, si de sacerdote agatur, tacto pectore.

*S. Off.,* 6 August, 1897; *Fontes,* n. 1190, ad 8: Quoties autem iuramentum de secreto servando et, pro diversis casibus, de veritate dicenda . . . deferendum sit, iuramentum ipsum semper et ab omnibus, etiam sacerdotibus, *tactis Ss. Dei Euangeliis et non aliter,* praestandum erit.

The solemn calling on God to witness an expression of the truth is almost universally, both in civil and canon law, accompanied by an action of some kind which varies with the custom and locality, but the action always has some religious signification.[3] Though the oath has, of course, its full force in conscience without any action whatever, legal rules of the external forum quite properly define the action, and some of the older writers stress, perhaps unduly, its necessity. Reiffcnstuel, for example, holds that in the strict rigour of the law, if touching the gospels is required, a witness with both hands amputated cannot take the oath.[4]

[1] *Periodica,* 1936, p. 202.
[2] *Cottar. Brngen.,* 19,6, n. 356.
[3] Cf. D'Annibalc, *Theologia Moratis,* II, §24; *I'Ami du Cltrgi,* 1950, p. 195.
[4] Ed. Vivés, III, p. 39.

Touching the gospels is the common form of this action in canon law, with a variation, or at least an alternative, of touching the breast in the case of a priest. Amongst the sources quoted for canon 1622, §1, the only reference for the variation is in an instruction from Gregory IX to a bishop directing him not to touch the gospels "propositis tantum, non tactis evangeliis".* Reiflenstuel gives other authorities for this rule in the case of bishops: it is the universal custom, he says, for bishops to take oaths in the presence of the gospels by touching the breast. The rule is extended to priests intervening at marriage trials in canon 1622, §1; in art. 96 of the instruction for diocesan tribunals the word "vel" seems to permit either action.

On other occasions when priests may be required to give testimony on oath the law requires them to touch the gospels, as expressly directed in *Fontes* n. 1190 for the evidence in a process *contra sollicitantes.* In the anti-modernist oath, which most priests have to take more than once, the conclusion of the official formula is "Sic spondeo, sic iuro, sic me Deus adiuvet, et haec sancta Dei Evangelia". Other forms of oath conclude "quae manibus meis tango", the omission in the anti-modernist oath indicating, it seems to us, that on this occasion the priest touches the breast, which is certainly more convenient when a number of priests take the oath together.

Our conclusion is that cither form is valid, but the form which is clearly indicated on any given occasion must be used for the lawfulness of the action; in marriage trials the direction of canon 1622, §1, should be followed, notwithstanding the wording of art. 96 of the 1956 instruction, and of previous instructions[2] which give ηὸ variation for priests. In the process for proving non-consummation of marriage, priests should touch the gospels, as indicated in the forms of oath contained in the Appendix VII-IX of the rules issued, 23 May, 1923, by the *Congregation of the Sacraments.* We can find no satisfactory reason why there should be a double method when priests are taking oaths; the custom of touching the breast may be due to a regard for the sacerdotal office and dignity which is as sacred as the written text of the gospels; the rule excluding this method in a process *contra sollicitantes* may be due to the fact that a priest's sacerdotal integrity is being investigated.

### 519.—Prayer for the Clergy

*I have recollections of a liturgical prayer for the clergy beginning, pertaps ominously, with the words "Deus qui solus mirabilia facis". Where is the texh found?*

*Missale "Romanum,* Orationes Diversae, n. *-j,* "Pro Praelatis, et congregationibus eis commissis": Omnipotens sempiterne Deus, qui facis mirabilia magna solus: praetende super famulos tuos, et super congregationes illis commissas, spiritum gratiae salutaris; et, ut in veritate tibi complaceant, perpetuum eis rorem tuae benedictionis infunde.

The prayer is in exactly this form in *Missale Westmonasteriense,* "Pro prelatis et subditis", H.B.S., II, col. 1143; also in *Missale Romanum,* H.B.S.,

* c. 7 X, *tie ittramtnto calumniar,* II, 7; Friedberg, Vol. II, col. 268.
1 E.g. *Fontts,* n. 4901, ad 12.

XVII, p. 465, with an alternative "super famulum tuum vcl super famulos tuos". It is in the *Gelasian Sacramentary,* Muratori, col. 737, with the variation "super hos famulos degentes in hac domo", and in col. 719 "super famulos tuos" under the heading "Missa in Monasterio". In the *Gregorian Sacramentary,* Muratori, col. 197, under the heading "Missa pro Abbate vel Congregatione" the reading is "super famulum tuum (illum) Abbatem, vel super cunctam Congregationem illi commissam".

In the suggested formula for inducting a parish priestl authorized by Cardinal Vaughan in the diocesan synod of 1894, a translation of the prayer in the current missal forms part of the rite.

The text seems to be of monastic origin, but there is not, it appears, any ancient authority for limiting the petition to prelacy, unless "vel" in the text of the *Gregorian Sacramentary* is to be taken as a rubrical direction, when "complaceant" and "cis" would have to be in the singular, for which we can find no textual authority.

To be used as a nice piece of liturgical humour, as though the amendment of the lives of the clergy called for some miraculous divine intervention, it would be necessary to quote the text in a truncated form, as Sir Nevile Henderson does in his reminiscences, *Water Under the Bridges,* p. 154.

## §3. PARISH PRIESTS

### 520.—Parochial Mass

*What, if any, is the official liturgical weaning of "parochial" Mass, as applied to a low Mass, said in churches in England, on Sundays, preceded by tbe Asperges and followed by the prayer for the king?*

There is not, we believe, any very strict meaning to be given to the term "Missa Paroecialis", though it is part of the liturgical revival, in many places on the Continent, to make one sung Mass the chief parochial function of the week, at which every parishioner should attend if possible. Augustine writes, quoting Duchesne: "At the Masses celebrated in chapels, cemeteries, presbyterial churches, and even in the great basilicas, there were present, the stational days excepted, only a private congregation, consisting of a family or corporation, or the inhabitants of a quarter, or any kind of association of the faithful, whether resident or pilgrims. The Mass said on such occasions was a 'private' Mass. The public Mass, that is to say, the stational Mass, was that in which the whole Roman Church was considered to take part. This would, to some extent, tally with our parish Mass as a public Mass, and the non-official Mass as a private Mass."[2] Since we now have, in our parish churches, not one but several public Masses, a convenient meaning to be given to the term "parochial Mass" is "principal Mass" or "chief Mass"; it is the one which is usually sung and which is preceded by the Asperges and followed by the prayer for the king.

[1] Q. 5M.
[2] *Utur&ical Law,* p. 183.

Notwithstanding the definition of a "parochial" Mass adopted by certain authors from a decree of the *Congregation of Rites,* n. 3623, 1, we are of the opinion that it cannot be taken exclusively as a synonym for "Missa pro Populo".

This view is supported by other decrees issuing from J.R.C. There is one, for example, dated 21 February, 1896, n. 3887, which fixed the obligation of celebrating Mass corresponding to the office, on days when some other extrinsic festival was being observed (presumably a votive Mass): "Obligationem, in casu, quoad Missam Conventualem Officio dici respondentem, adesse pro Ecclesiis in quibus ea dic fit Officiatura Choralis; quoad vero Missam Parochialem, eam Officio diei conformem esse debere, quando peragenda sit cum applicatione pro populo." The Sacred Congregation recognizes a parochial Mass which is not being applied for the people. Similarly, n. 3128.

The Code also seems to give a sense to "Missa Paroccialis" which is much wider than "Missa pro Populo". From canon 466, §§4 and 5, the obligation of applying Mass for the people may be fulfilled elsewhere than in the parish church, and may be said outside of the parish by a priest who is legitimately absent. Are we to conclude that, in the legitimate absence of the parish priest who elects to fulfil his obligation personally, the parish church must be without a parochial Mass? Canon 821, §2, states: "In nocte Nativitatis Domini inchoari media nocte potest sola Missa convcntualis vel paroccialis, non autem alia sine Apostolico Induito." Are we to conclude that, in similar circumstances, there can be no midnight Mass in a parish church?

Rightly, therefore, in our opinion, certain authors, who have weighed the subject in all its bearings, sec more than one meaning in the term "Missa Paroccialis", as, for example, the writer in *l'Ami du Clergé,* 1928, p. 528, and the writer in *Irish Ecclesiastical Record,* March 1935, p. 305 : ".. . liturgists, as we have seen, tend to identify *paroecialis* and *publica* and to broaden the meaning of *missa paroecialis.* ... A Mass may be called parochial for many reasons, not merely because it is applied for the people, but also because said for their benefit to enable them to fulfil their Sunday obligation, or because it is said in a parish church, or as a parochial duty by the parish clergy. We think that a Mass said at a fixed hour in a parish church for the benefit of the people of a parish may rightly be called a parochial Mass. It is parochial *triplici ratione* since it is said for parishioners in a parish church and in discharge of a parochial duty." Cf. also *Irish Ecclesiastical Record,* 1945, LXV, p. 271 ; O'Connell, *The Celebration of Mass,* I, p. 271.

The view which restricts the term to "Missa pro populo" exclusively is well defended by Mgr Cronin in *The Clergy Review,* 1936, XI, pp. 156, 435.

## 521.—Preaching and Catechizing

*Does the common law state how often a parish priest must preach and catechise, and whether be may delegate this duty?*

(i) A parish priest is bound directly to preach "iure ecclesiastico", from his office, and he enjoys this power from his appointment without special faculties from the Ordinary, in much the same way as he possesses ordinary

jurisdiction in the confessional.[1] Indirectly this power is "iure divino", in so far as he shares the pastoral office of the bishop, to whose directions he is, of course, subject.

The *maximum* cannot be defined and will depend on the capability and zeal of individuals: a short sermon at every Mass is desirable on Sundays and holy days (canon 1345); preaching should be more frequent during Lent and Advent (canon 1346).

The *minimum* is defined in canon 1344: he is bound to preach at the chief Mass on Sundays and holy days, a duty which may not be delegated to other priests habitually except with the Ordinary's permission. This is a grave obligation, the neglect of which for a month would, according to St Alphonsus, VI, n. 269, be grave sin: hence the penalties to which even an irremovable parish priest is liable from canons 2182, 2382.

The matter of this sermon is normally in the form of a homily on the gospel (canon 1344, §1), which may, however, be widely interpreted to include any portion of Christian doctrine, as canon 1345 indicates. *Schemata* exist which, more or less adapted to the liturgical season, cover the whole of Christian doctrine over a period of years.[1]

(ii) As regards instructing children, the common law of the Code expresses his obligations generically in canons 467, §1, and 1329; specifically, in relation to the sacraments of penance, confirmation and Holy Eucharist, in canons 1330, 1331. But, unlike canon 1544, the common law permits delegation of this duty, as in canon 1333, §1. ***IV*** \^*estm.,* xvii, 6, directs that the catechism, including that on Sunday, may be "sivc per ipsum ecclesiae rectorem sive per coadiutores". It is assumed that the parish priest will sec that the duty (c. 1332) is rightly performed by his delegates, and the Confraternity of Christian Doctrine is the normal instrument for assisting the parish priest in instructing both children and adults.

## 522.—Frequency of Missions

*In some parishes in England no mission has been given for thirty years. Is a parish priest justified in not fulfilling the requirements of canon* 1349 *on the ground that he is waiting for the Ordinary to arrange and order a mission, or is he himself bound to take the initiative?*

St Thomas has a phrase which is an excellent *régula juris* "In manifestis non est opus interpretatione, sed cxecutionc".[3] The terms of the canon arc so clear that there seems no room whatever for the view that the arrangement of a mission is the duty of the Ordinary'. "Ordinarii advigilent ut, saltem decimo quoque anno, sacram, quam vocant, missionem, ad gregem sibi commissum habendam parochi curent." The obligation is on the parish priest, "parochi curent", and it is for the Ordinary to see that the law is obeyed. "Leges ecclesiasticae intelligendae sunt secundum propriam

[1] *S.C. Consist.,* 2 July, 1917, n. j, a document explanatory of the Encyclical of Benedict XV, 15 June, 1917.

[2] *Short Instructions for the Early Masses* (Rockliffc, Liverpool); *Programmes of Sermons,* p. 613 *seq.* (Browne & Nolan); Bradley, *The Way of Truth* (Bradford).

[3] II-II, 120, i, ad 3.

verborum significationem . . (canon 18). It is clear from the word "advigilent" that the immediate object of the Ordinary's duty is to sec that the parish priest has a mission at least once in ten years. In a similar way, the Metropolitan has the right, with regard to his suffragans, of watching: "vigilare ut fides ac disciplina ecclesiastica accurate serventur, ac de abusibus Romanum Pontificem certiorem facere" (canon 274, 5). In the case of a defaulting parish priest, who is immediately subject to his jurisdiction, the Ordinary can insist on the law being observed, either by issuing a general reminder to the clergy, or by warning individuals of the obligation.

The manuals of canon law, in dealing with this subject, usually restrict themselves to quoting the canon, and giving a reference to the condemned proposition 65 of the Synod of Pistoia,[1] which ridiculed the idea of missions. Coronata deals more expressly with the point raised: "Vi huius canonis parochi decimo saltem quoque anno ad prucurandam suo populo missionem tenentur, licet id directe ipsis non praecipiatur aut etiam frequentius si id jus particulare aut singulare praeceptum Ordinarii exigat. . . . Si Ordinarius necessarium putet, potest parochis etiam religiosis exemptis, motu proprio missionem imponere."[2]

### 523.—Necessity of Installation

If

*Is the installation of a newly appointed parish priest so necessary and essential [I. c-] without it he cannot validly perform tbe functions of his office, e.g. assistance at marriages?*

Canon it : Irritantes aut inhabilitantes eae tantum leges habendae sunt, quibus aut actum esse nullum aut inhabilem esse personam expresse vel aequivalenter statuitur.

Canon 461 : Curam animarum parochus obtinet a momento captae possessionis ad normam can. 1443-45.

Canon 1443, §1: Nemo possessionem beneficii sibi collati aut propria auctoritate capiat, aut non emissa fidei professione, etc.

Canon 1444, §1 : Missio in beneficii possessionem fiat secundum modum iure peculiari praescriptum, vel legitima consuetudine receptum, nisi iusta ex causa Ordinarius ab eo modo seu ritu expresse in scriptis dispensaverit; quo in casu haec dispensatio locum tenet captae possessionis.

Canon 1095, §1.1: Parochus et loci Ordinarius valide matrimonio assistunt a die tantummodo adeptae canonicae possessionis beneficii ad normam can. 334, §3, 1444, §1, vel initi officii. . ..

(i) Though our first reaction to the above question was in a negative sense, an examination of the above canons and of the commentators thereon compels the conclusion that a newly appointed parish priest cannot *per se* validly perform functions, such as assisting at marriage, unless he is either installed or expressly dispensed from this rite. Claeys-Bouuaert, *Manuale luris Canonici,* I, η. 569: "Immissio in possessionem seu *installatio* requiritur ut iurisdictio valide exerceatur." Cappello, *Periodica,* 1929, xviii, p. 149: "Deficiente huiusmodi *expressa* dispensatione *in scriptis* data, deest canonica

1 Dcnz., 1565.
* *Institutions Juris Canonià,* II, §931.

possessio, ideoque parochus *per se* non fruitur iuribus spiritualibus ac temporalibus, quae paroeciali beneficio adnexa sunt." Cf. also Fanfani, *V)e hire Parochorum* (1936), n. 124; Cancc, L·? *Code,* n. 404. The reason for this practically universal teaching is that canon 461 is seen to be equivalently an invalidating law, by comparing it with the other canons cited above, and with canon 2594 which, amongst other penalties for occupying a benefice "propria auctoritate", states that the person is "ipso iure inhabilis". Cf. *Homiletic Review,* March 1935, p. 579.

(ii) We must not, however, too readily concede that the parish priest's actions are actually invalid because of this legal defect, for there are many considerations which argue the contrary. Common error, for example, could be held to supply jurisdiction, as Cappello maintains in *Summa laris Canonici,* n. 502: "Si possessio illegitime capta fuisset, *per se* nulla et irrita foret ideoque actus a parocho positi invalidi essent. Practice tamen eorundem validitas sustineri posset ob errorem communem, seu ex praescripto canon 209." Custom, also, if centenary or immemorial, could be invoked against the law of canon 461 in accordance with canon 5, though it is not, perhaps, applicable to a country where parishes have existed only since the Code was introduced. Moreover, it is the common practice to appoint a priest as "vicarius oeconomus" before making him "parochus", and it could be maintained that his powers as "oeconomus" continue until he is validly in possession as "parochus". There is, lastly as a final safeguard, the principle of canon 209 by which the Church supplies jurisdiction "in dubio positivo et probabili sive iuris sive facti". All doubt can, however, easily be removed, in places where installation is not customary, by the simple method of dispensing from it, and it is the practice of most Ordinaries always to add a phrase to this effect in the letters of appointment.

### **524.**—Form of Installation

*Is there any recognised form or rite to be employed when a newly appointed parish priest takes possession?*

It is a juridical rather than a liturgical function, and no rite is therefore necessary.

From canons 461, 1406, §1, 7, and 1443-1445, it is clear that three things are required: (λ) conferring and acceptance of the parish; *(b)* profession of faith; (r) installation, which is done by the Ordinary or his delegate; it is also known as induction, corporal institution or putting in possession, and though there exists no recognized form in the common law, canon 1444 directs that whatever is prescribed by particular law or custom must be observed, unless the Ordinary in writing dispenses from its observance.

Though (r) is distinct from *(a)* and *(b),* it is often convenient to group all three together, but it is purely a matter of local law and custom, and the procedure may or may not be determined. Thus *Liverpool Synod,* XXIII (1945), n. 42: "Parochus designatus, quamprimum postquam nominatus erit, vicarium foraneum loci adeat ut omnia parentur pro institutione in forma approbata. . . . Porro in ipsa ecclesia astantibus fidelibus, cum aliqua sollemnitate et sacro sermone qui ritui bene conveniat perficiatur." *Malines Synod* (1924), η. 95: "Decani nominatos a Nobis parochos districtus sui in

ecclesiarum possessionem ex delegatione nostra solemniter introducent, juxta ritum in nostra dioecesi usitatum; idque in ipsa, ad quam quis nominatus fuerit, ecclesia, modo tamen gravis non obstet ratio. Non poterunt nominati ullum juridictionis paroecialis actum valide exercere ante solemnem hanc introductionem, nisi Nobis aliter visum fuerit." *Westminster Synod,* XLV (1925), permits the form prescribed by Cardinal Vaughan to be used, if desired.

The rite will, therefore, vary according to local usage. Mgr Duchesne has printed an eighth century rite[1] which is built up on the familiar idea of the parish priest being married to his church—*viduata ecclesia·,* there is a priest accompanying him—*paranymfa*—the friend of the bridegroom. During the Mass the parish priest occupies the seat normally reserved to the bishop and recites the *Gloria in excelsis*—a hymn reserved to the bishop at that time. None of these rites has survived in modern times, except the concluding one: "Ea completa, egreditur de ecclesia et epulat cum amicis suis."

Seeing that the *Ritual* and *Pontifical* contain rites for every conceivable occasion, it is a little surprising, perhaps, that there is none for installing a parish priest, except what local custom prescribes, for example: taking possession of the parish keys and books, ringing the bell, kissing the altar, opening and closing the missal.[2] The essential acts, i.e. accepting the episcopal document of institution and making the profession of faith, are sometimes included in the ceremony.

The form mentioned above as prescribed by Cardinal Vaughan is in English throughout,[3] and comprises the following rites and prayers: (The dean is vested in cope and stole, the parish priest in cotta and stole.)

*Come Holy Spirit,* etc., with the prayer, recited by the Dean.

*Psalm LXVI.*

*Reading of the Decree of Appointment* by the Dean.

*Profession of Faith* by the new parish priest, who signs his acceptance of the appointment.

*The Induction.* "I hereby, in the name of My Lord, the Cardinal Archbishop of Westminster, appoint and induct you into the charge of all that belongs to the Rectorship and Pastorate of the church and mission of (N.N.) in the name of the Father, and of the Son and of the Holy Ghost." R. Amen.

*Tradition of Instruments·.* The Dean hands him the Missal, keys and account books, saying: "Receive these emblems of your spiritual and temporal duties, obligations and privileges, for God's honour and the salvation of the souls confided to your charge. May Our Lord grant to you the grace and the reward of the good and faithful servant in your office as Rector of the church and people, and may the flock follow you in the paths and pastures of the Catholic Church "

*Psalm CXXXIU.*

*Concluding Prayers·.*

V. Thou wilt turn again, O Lord, and give us life.
R. And Thy people shall rejoice in Thee.
V. Show us, O Lord, Thy mercy.
R. And grant us Thy salvation.
V. O Lord, hear my prayer.
R. And let my cry come unto Thee.

[1] *Origines du Culte Chrétien,* 1909, p. 48}; jQ.L.P., 1920, p. iqo.
[2] Cf. Pistocchi, *De Beneficiis,* p. 228; Rossi, *De Paroecia,* p. 181.
[3] *Westminster Synod XXXIII* (1894), pp. 32-9.

*Let us Pray*

O Almighty and Eternal God, who alone workest wonders, spread the spirit of Thy saving grace over our Pastors and the flocks committed to their charge, pour the unceasing dew of Thy blessing upon them, that they may be pleasing to Thee in all truth. Through Christ our Lord. R. Amen.

Defend, we beseech Thee, O Lord, from all adversity, the people of this mission, the Blessed Virgin Mary interceding for them, and as Thou seest them now prostrate with their whole heart before Thee, graciously protect them in Thy clemency from the snares of their enemies. Through Christ our Lord. R. Amen.

*Blessing* given by the new Rector from the altar.

This Westminster form is the only one we have seen for use in an English diocese. The sermon is preached either after the first or after the last prayer. In these days "parish" and "parish priest" should replace "mission" and "rector".

Rossi prints a form used in an Italian diocese, composed on rather similar lines, but at the *tradition of instruments* the parish priest is conducted all over the church and given each symbol with very expressive formulae, e.g. the keys: "Accipe claves ecclesiae ad custodiendum atria Domini, et dilige decorem domus cius, tamquam sponsam ornatam viro suo."

## 525.—Cathedral Parochial Rites

*It is maintained that the cathedral master of ceremonies has no competence in directing parochial rites, such as baptism, but that his powers are restricted to capitular functions such as Mass and office, the parochial vicar being responsible for the parochial rites. What is the ruling, if any, on this point?*

The competence of the master of ceremonies extends to all rites, no matter what their character, performed in the cathedral church. *Caeremoniale Episcoporum* requires certain qualifications, including the priesthood and requisite knowledge, in the senior master of ceremonies, who is to be "rituum ecclesiasticorum assiduus et diligens perscrutator". He is concerned chiefly with the person of the bishop and other dignitaries; "nihilominus omnia circumspiciat, singulorum munia perpendat".1 Certainly, this text assumes that he is functioning principally at capitular rites, but there can be no doubt that his authority extends to rites in the cathedral which arc not capitular. Canon 415, §5, n. 2 directs that it is the business of the cathedral chapter to sec that the parochial functions in the church are liturgically correct. But the chapter itself is subject to the directions of the master of ceremonies, as S.R.C. has often decided, during the course of an ecclesiastical rite, e.g. "Capitulares omnes teneri obedire Caeremoniarum magistro in iis quae divinum cultum respiciunt; eumdemque in sui muneris exercitio esse Capitularium directorem, non famulum".2 Other replies explicitly settle the question that the correct procedure at parochial functions rests with the master of ceremonies, e.g. 15 Sept., 1879, n. 3505 ad 1, 3, and 5: "Magister Caeremoniarum Cathedralis ius habet et obligationem curandi

1 ii May, 1817, n. 2578.10.

ut regulae liturgicae observentur etiam extra chorum, in Exequiis et in administratione Baptismi et Matrimonii et omnibus parochialibus functionibus."

### 526.—Precedence of Parish Priest

*At a function in his church which was attended by many of the clergy, including the local dean and a canon, the parish priest modestly insisted on the dean and the canon taking precedence of him in choir. Was this correct?*

The rules of precedence as contained in the Code summarize the existing law, and doubts should be settled on this basis, as in canon 6, 2-4. In canon 106 we have a highly successful attempt at reducing the rules to some leading principles, but they do not meet every contingency and n. 6 directs the Ordinary to make local rules having regard to local customs as well as to the common law. The above doubt, if not settled by local practice, should have been solved differently, in our opinion.

The parish priest in his own church takes precedence of all other clergy, unless the law provides to the contrary; for example, if only one canon, even though merely honorary, accompanies the bishop, he takes precedence of the parish priest.[1] Individual canons as such enjoy no precedence over the parish priest,[2] notwithstanding the permission they now have, from canon 409, §2, of wearing choir dress throughout the diocese.

Neither, in our opinion, should the local dean take precedence of the parish priest in his own church, unless the occasion is one on which he is exercising his decanal powers. Notwithstanding canon 449, §2, which gives a dean precedence over parish priests in his district, we rely for this opinion on 5.R.C., n. 723; canon 449, §2, is not considering the presence in the parish church of the dean as a private individual. Actually, the position given to deans varies in different dioceses, according to the degree in which they function, and it might well be that this opinion is rejected by local custom in some places.

if

The reason for the precedence given to a parish priest in his own church is well expressed by Ferraris: "Quilibet autem parochus in propria ecclesia omnibus aliis parochis praecedit, excepto capitulo cathedralis, quia . . . quilibet in domo sua regulariter dicitur maior . . . Rectores autem Ecclesiarum in propriis ecclesiis dicuntur esse in propria domo."[3]

As between the dean and the canon on this occasion, precedence is due in our opinion to the canon, saving local rules to the contrary.[4]

### 527.—Missionary Quasi-Parochus

*Has the administrator of a pro-cathedral, in a mission vicariate where all are quasi-parishes, the same canonical status as a quasi-paroebns?*

[1] Authorities in De Hcrdt, *Praxis Pontifitalis,* I, §109.

15.R.C., nn. 616 and 2239.2.

» s.v. *Praecedentia,* n. 84. Cf. also *I'Ami du Clergi,* 1914, p. 156, where other authorities are given for this view.

4Cf. *Code Commission,* to November, 1925 ; Michicls, *De Personis,* p. 561, grades a dean below a canon.

Canon 451, §2: Parochis aequiparantur cum omnibus iuribus ct obligationibus paroecialibus et parochorum nomine in iure veniunt:

(1) Quasi-parochi, qui quasi-paroccias regunt de quibus in canon 216,§3·

(2) Vicarii parocciales, si plena potestate paroeciali sint praediti.

Canon 478, §1 : Sicut parochus ecclesiae cathcdralis, ita vicarius paroecialis cathedralis praecedit omnibus aliis dioecesis parochis aut vicariis . . .

The full observance of the canon law on parishes cannot be observed in missionary districts, and in some places all the missionaries function as delegates of the Ordinary. The Church, however, desires, wherever possible, that missionary districts should be divided into parishes after the pattern of parishes elsewhere, with church, parishioners and rector assigned. They are styled *quasi-paroeciae,* and with the exceptions mentioned by the law, their rectors are equivalent to parish priests. Cf. canon 216 and *Propaganda,* 2$ July, 1920, *SyHoge,* n. 82.

Canon 471 *seq.,* in determining the status of *vicarii paroeciales,* a term which includes, for example, those in charge of vacant parishes, legislates for the whole Church. The most dignified is the priest whom we are accustomed to call in England the *administrator* of the Cathedral.

We think it is quite certain that, in missionary districts which are divided into *quasi-parishes,* the administrator of the pro-cathedral has not only the same rights and obligations as the *quasi-parochi* but enjoys precedence over them all on an analogy with canon 478, §r. We cannot find the point explained even by those canonists, such as Vromant, who deal expressly with missions.

## 528.—Division of a Parish

*Is the division of a "paroecia amovibilis" valid if made without a canonical cause?*

It is suggested by our correspondent that a canonical cause is always required for dividing a *paroecia inamovibilis,* and that doubt or uncertainty arises only in the case of *paroecia amovibilis.* We can find no basis for this distinction as regards the division of a parish; the difference between the two kinds of parish has reference not to the immunity of the territory, but to the legal process in removing a parish priest. Hence, canon 1427, §1: "Possunt etiam Ordinarii ex iusta et canonica causa paroecias *quaslibet,* invitis quoque earum rectoribus et sine populi consensu, dividere . . All parishes are subject to division, even those in charge of religious, provided canonical reasons exist.

The canonical causes given in §2 of the same canon arc: "Si aut magna sit difficultas accedendi ad ecclesiam paroecialcm, aut nimia sic paroccianorum multitudo, quorum bono spirituali subveniri nequeat ad normam can. 476, §r." From canon 1428 the division of a parish without canonical cause is invalid. The commentators discuss the meaning of "difficultas" and "nequeat",1 but the question is scarcely capable of absolute definition, since it will depend on local conditions. The decision as to the existence of a canonical cause rests, of course, with the Ordinary, against whom a recourse to the Holy See may be made *in devolulivo* (canon 1428, §3).

1 Cf. *I'Ami du Ctcrtf,* 19P. P· '9J-

### 529.— Cure d'Ars

*Is there in existence any society or confraternity for priests associated with the memory of St John Baptist Vianney?*

The only one of which we have any knowledge is the "Confrérie Saint-Jean-Marie-Vianney" mentioned in *Semaine Religieuse de Cambrai,* 22 June, 1935, and reprinted in *Documentation Catholique,* 23 November, 1935. It appears that the association began spontaneously the previous year and received provisional ecclesiastical approval. The Archbishop of Cambrai has erected this confraternity, numbering over 9,000 members, in the "Maison Saint-Jean-Vianney", a centre for priests' retreats, and has fully and canonically approved its constitutions; its purpose is to promote devotion to the saint and to secure by his intercession the sanctity of the clergy; inquiries should be addressed to the chancellor of the archdiocese of Cambrai.

## §4. BENEFICES AND REVENUES

### 530.— Support of Pastors

1. *Does the fifth commandment of the Church "to contribute to the support of our pastors" bind the faithful wider pain of mortal sin?*

2. *Could the Ordinary fix a minimum sum of money, to be given by the faithful, e.g. one shilling per year?*

3. *We suppose that a penitent who is able to give the fixed shilling refuses to do so. Would the confessor ever be justified in refusing absolution? Could the parish priest for the same reason refuse Holy Communion?*

This question is usually dealt with rather superficially by the theologians, chiefly, we suppose, because the custom of requiring the faithful to pay a definite annual sum towards the support of the Church has fallen into disuse. Everyone would agree with St Thomas that "ministri Ecclesiae maiorem curam debent habere spiritualium bonorum in populo promovendorum, quam temporalium colligendorum",[1] but in the *corpus* of the same article he teaches that the people are bound to pay tithes (decimae) and the obligation arises partly from the natural, partly from the ecclesiastical law. The obligation of the natural law is based on the necessity of the human race worshipping God collectively: the ecclesiastical obligation on the need which may arise for determining more accurately the nature and amount of the offerings to be made for the support of the Christian religion. The Council of Constance condemned the proposition of Wyclif "Decimae sunt purae eleemosynae, et possunt parochiani propter peccata suorum prelatorum ad libitum suum eas auferre."[2] At present the canon law is contained in

[1] *Summa TheoL,* II–II, S7» 1, ad 5.
[1] Dcnz., n. 427.

the rather general terms of canon 1502: "Ad decimarum et primitiarum solutionem quod attinet, peculiaria statuta ac laudabiles consuetudines in unaquaque regione serventur."

Ad i. The obligation is a grave one on the Church at large. Of this there can be no doubt, considering the importance of the purpose for which contributions are levied, and the teaching of St Paul expressed so forcibly in i Cor. ix, 7-14. Though establishing the right, which the Lord ordained, that they who preach the gospel should live by the gospel, he himself elected not to claim his right: "Nevertheless, we have not used this pow'er: but we bear all things, lest we should give any hindrance to the gospel of Christ."

But it cannot be asserted that the obligation is grave on die part of every individual, because it is one of *legaljustice* which cannot easily be determined. The Church, in a given place, might already be supported adequately by charitable endowments; if not, it is the obligation of the faithful to give according to their means. It is certain that the obligation is much more definite and strict "si ministri non haberent unde sustentarentur",[1] but even in these circumstances the duty of any individual cannot be ascertained unless the Ordinary of a place has determined exactly the amount to be given by each. We agree with Merkclbach: "Fideles non facile arguendi sunt de gravi peccato, nisi subsidium sine ratione negent atque ita causa sint ut sacerdotes sint in egestate vel ceteri fideles nimis graventur."[2]

Ad 2. It is open to the Ordinary, if the circumstances seem desperate enough to warrant such an action, to fix an amount for individuals. We have no knowledge of the "shilling per year" in any English-speaking diocese, but in some French dioceses, after the law of separation, the sum of two francs, later increased to ten francs, was fixed for each inhabitant. In certain Spanish-speaking districts it appears that the sum is fixed in proportion to income, e.g. two piastres for an income of 1,000 piastres.[3] Before it can be said, beyond all doubt, that the non-fulfilment of this obligation is a grave sin, it must be established that the Ordinary, beyond all doubt, has imposed it *sub gravi.*

Suppose, for the sake of argument, that this has been done: it still remains extremely doubtful whether non-payment involves restitution. The doubt arises, firstly, from the fact that it is not clearly due on commutative justice, and there is common agreement that a violation of commutative justice alone carries with it an obligation to make restitution; it arises, secondly, from the uncertainty of the legislator's intention in this regard. ". . . quamvis subsidium impositum negantes duplex specie peccatum committant, irreligiositatis atque iniustitiac, Ecclesia tamen non videtur ius suum urgere sub onere restitutionis; unde peccatum videtur potius opponi iustitiae legali quam commutativae".[4]

Ad 3. A priest is bound to refuse the sacraments to those who are certainly indisposed, e.g. no contrition for grave sin in Penance, or the state of mortal sin in receiving Holy Communion; we may pass over the distinc-

[1] *Summa Theo!.,* II–II, 86, r.
[2] *Tbtol. Moralis,* II, §708; Cf. also Prümmcr, II, §499.
[3] *'TAmi ilu Cler&e,* 19**ji,** p. 1J3.
[4] Merkclbach, *lot. tit.* Prümnacr, *lot tit.,* states that there may be an obligation to make restitution, a conclusion which wc think too strict. It is negatived almost immediately ". . . tamen Ecclesia non videtur ius suum urgere, aut saltem renuntiat restitutioni exigendae ob defraudata vectigalia ecclesiastica .

tion between public and private sinner as irrelevant. From what has been said above, this certainty is lacking, and a priest must be extremely loth to judge the non-fulfilment of this obligation to be mortal sin. Faced with a flagrant example of neglect of this duty, in those places where the Ordinary has settled a fixed amount of contribution, he should first put the case to the Ordinary. . contra mentem Ecclesiae generatim ageret sacerdos, qui non solventibus (subsidium) sacramenta denegaret aut sacramentalia":[1] "contra mentem ecclesiae" is an extremely mild way of putting it. It seems to us that the scandal resulting from refusing the sacraments for such a reason would be so great that it would never be lawful to do so. "What is my reward then? That preaching the gospel, I may deliver the gospel without charge, that I abuse not my power in the gospel."[2]

### 531.— Benefices without Endowment

*In countries which are not subject to Propaganda, are those parishes canonically erected to be regarded as benefices, even though there is no endowment attached to them for the support of the priest?*

It should be noted that by endowment, *dos beneficii,* may be understood not only a capital sum producing interest or property producing revenues, but also, according to canon 1410: "certae et debitae praestationes alicuius familiae vel personae moralis, sive certae et voluntariae fidelium oblationes quae ad beneficii rectorem spectent, sive jura, ut dicitur, stolae intra fines taxationis dioecesanae vel legitimae consuetudinis . . .". Canon 1415, §t, states: "Beneficia ne erigantur, nisi constet ea stabilem et congruam dotem habere, ex qua reditus perpetuo percipiantur ad normam can. 1410." It would seem, therefore, that without a *dos* the erection of a parish as a benefice is not conceivable. This is supported by §3 of the same canon: "Non prohibetur tamen, ubi congrua dos constitui nequeat, paroecias aut quasi-paroccias erigere, si prudenter praevideat ea quae necessaria sunt aliunde non
i defutura."

(i) It has been declared that parishes in the United States, erected according to canon 1415, §3, are benefices. The declaration occurs in a letter from the Apostolic Delegate to the bishops of the United States. It is a "private" document in the sense that it has not been officially promulgated, but it is an authoritative interpretation of the law for that country and is "public" in the sense that it has been published in the ordinary sources.[3] The Apostolic Delegate records that on 26 September, 1921, the President of the *Code Commission,* Cardinal Gasparri, answered that no special decree of the Ordinary was necessary for the erection of a parish, and that it was sufficient for the Ordinary to define the territorial limits and assign a rector to the people and the church within the said limits. He proceeds:

"His Eminence added, moreover, that a parish is always an ecclesiastical benefice according to canon 1411, 5, whether it has the proper endowment (resources or revenue) as described and defined in canon 1410, or even if

1 Mcrkclbach, *toe. at.*

1 1 Cot. ix, x8.

»E.g. Bouscarcn, *Digest,* I, p. 149; Sabetti-Barrett, *Compendium,* p. 1104; *Irish Essiesiastical lieeord.* 1918, XXXI, p. 505.

lacking such endowment (resources or revenue) it be erected according to the provisions of canon 1415, §3.

"In a second question, I asked further, if, after the promulgation of the new Code, a special decree of the Ordinary was necessary to constitute as canonical parishes those which, previous to the promulgation of the new Code, had been established in the manner described. . . . The answer was that no decree was necessary, and that such parishes became canonical parishes *ipsofacto* on the promulgation of the new Code. It is evident from this official answer that all the parishes of the United States having the three necessary qualifications, viz. (1) a resident pastor; (2) endowment (resource or revenue according to the provisions of canons 1410 or 1415, §3); and (5) boundaries, are not only parishes in the strict canonical sense, but also are ecclesiastical benefices. . . ."

The apparent contradiction between canons 1410 and 1415, §3, is met in various ways. Cappello suggests that the *dos,* in the case of parishes erected according to canon 1415, §5, exists *in spe* and that this suffices.[1] Fanfani writes: "Tunc tamen huiusmodi novae paroeciae absque dote erectae beneficia paroecialia proprie dicta non sunt, neque propterea leges beneficiorum in omnibus eis applicare licet: nisi ex speciali privilegio vel consuetudine nihil, ut in Statibus foederatis Americae, desideretur tanquam dos, ad ipsum beneficium paroeciale constituendum."[2]

(ii) Does the above decision for the United States apply also to England? Canon 17, §2, states: "Interpretatio authentica, per modum legis exhibita, eandem vim habet ac lex ipsa; et si verba legis in se certa declaret tantum, promulgatione non eget et valet retrorsum; si legem coarctet vel extendat aut dubiam explicet, non retrotrahitur et debet promulgari." The authentic declaration for the United States may be an example of what is meant in the penultimate clause, *si verba legis,* etc., and therefore requires no further promulgation. It is merely the declaration of a law which is objectively certain, a clarification of the Consistorial decree, 1 August, 1919,[3] which determined that missions which were formerly under Propaganda became parishes after the Constitution *Sapienti Consilio.* A similar decision, promulgated in the *Acta,* was given for Canada in 1952.[4]

But it could rightly be objected that these promulgated decisions do not directly touch the matter under discussion. They decide the parochial status of formerly existing quasi-parishes, and the consequent obligation of *Missa pro Populo.* They do not deal with the question whether such parishes arc necessarily benefices. The existing law seems to recognize, in canon 54 that it is possible to have a parish which is not a benefice, properly so called. The point of law is at least a *dubium,* and it could be held that Gasparri's interpretation for the United States needs promulgation before it can be applied elsewhere, according to the rule of canon 17, §2, *si . . . dubiam explicet,* etc. This is the view of Fanfani, and it appears to be the view of Bouscarcn since he expressly deals with it as something peculiar to the United States.

Our own view is that every canonically constituted parish in England is *ipso facto* a benefice. The Holy See is already accustomed to apply canon 1455

[1] *Summa Juris Canonici,* Π, §867.
[*] *Dr Jure Parochorum,* §10.
[9] *A.A S.,* 1919. XL P J46; Bouscarcn, *Digest,* I, p. 146.

to certain reserved parishes, thus regarding them as benefices, and it is altogether unlikely that in England a different rule from that applied in the United States would be introduced. The conditions in both countries are practically the same.

### 532.—Benefice: Superfluity

*Why dots the law not direct superfluities to be applied to the good of the parish, instead of merely stating that they must be given to religious or charitable purposes in general?*

The reason is that a *beneficium curatum,* a benefice with care of souls such as a parish, is only one of many kinds of benefices enumerated in canon 1411. A non-residcntial benefice, with no material burdens attached to it, might conceivably be of considerable value; the beneficiary is nevertheless forbidden to enrich himself on its revenues. A further reason is that, in many instances of *beneficia curata,* the expenses attached to the care of church and school, or to divine worship, are provided from sources other than the priest's benefice. The rule, therefore, of canon 1473 ls so framed as to apply to all benefices generically. It is a pity that the manuals of moral theology, which are usually in the hands of parochial clergy,[1] do not usually make this clear, and the impression is received that "superflua" may always be given at will to any religious or charitable purpose.

It is certain that this is not so in the case of many parochial benefices, and a writer like Fanfani,[2] who is solely concerned with the benefice attached to the care of souls, is careful to make this clear: "Nomine dotis hic intelligitur 'bona illa temporalia ex quibus reditus perpetuo percipiantur pro congrua sustentatione parochi aliisque necessitatibus paroeciae' ... id est sufficientem (dotem) ad honestam sustentationem parochi atque ad necessitatibus ecclesiae paroccialis subveniendum." Similarly Wcrnz-Vidal: "Dos sufficiens ct stabilis tertio loco requiritur unde reditus perpetuo percipiantur ad normam can. 1410 tum ad sustentationem bénéficiât! tum ad ferenda onera fabricae ecclesiae et cultus divini, si istis oneribus aliunde non jam sit provisum."[3] The canons themselves often indicate purposes, other than the support of the beneficiary, which he is bound to provide for, e.g. canon 1477, §3: "Minores reparationes quae ipsi incumbunt, beneficiarius quamprimum perficiat, ne maiorum necessitas enascatur." Also, the obligation to devote certain revenues to the material care of the parish may be implicitly or expressly undertaken by the beneficiary on his appointment. Canon 1475, §1: "Beneficiarius tenetur peculiaria onera beneficio adnexa fideliter adimplere." His obligations, in this respect, arise not merely from charity, but from justice, and he can be compelled by the Ordinary to fulfil them.

The reason for all this is ultimately to be found in the nature of the *dos beneficii* which, in the case at least of benefices with care of souls, is to be understood in the same way as the *dos* or dowry which a bride brings to her

1 E.g. NoIdin, III, n. 581 ; Fcrrcres, I, n. 692.
- *Dt Jirrt Parochorum* cd. 1936, §10.
l *Jtu Canomcum** II, n. iji.

husband. Collatione beneficii initur quoddam spirituale matrimonium inter beneficiatum et ecclesiam, in qua beneficium excitatum est: exinde beneficiarius incipit esse dominus ecclesiae quasi *sponsae,* et bonorum beneficii quasi dotis."[1] "Nomen *dotis* retinent praesens canon cum sequentibus; et in multis, respectu juris et officii standi in judicio, respectu administrationis, curationis et usufructus, a regimine dotis; regimen bcnc-ficiale beneficiarium marito adaequat."[2] The idea is well illustrated in a decision, *S.C. Cone., 12* December, 1931,[3] determining that the revenues of certain minerals should go to enriching the *dos,* and not as *fructus* to the beneficiary. Λ commentator on this decree in *Apollinaris* writes: "Est enim dos constituta bonis omnibus auctoritate legitima perpetuo adnexis officio ecclesiastico eiusdem sustinendis oneribus, inter quae honesta ponenda est, forte non primo sed neque postremo loco, cleri sustentatio" .. . "iisque (fructibus beneficialibus) tantum potest uti frui, eosvc percipere et consumere, uti vir probus fruitur utitur bonis dotalibus ad sustinenda onera matrimonii, atque primum ut ipse vivat."[4] We are all familiar with the saying of St John Fisher, about his poor diocese of Rochester, that he would not desert his poor old wife for the richest widow in England.[5]

The older writers rarely lost sight of this aspect of the *dos* attached to a benefice. Thus, the English moralist and canonist, Gregory Sayers, O.S.B. (ob. 1602), defines the benefice: "Est autem beneficium ecclesiasticum jus quoddam perpetuum Clerico canonice inhaerens percipiendi fructus pecunia aetimabiles, nccnon census et emolumenta omnia alicuius ecclesiae, itemquc jura haec et ecclesiam tuendi."[0] The modern manualists appear often to have lost sight of it. They speak of the obligation on the beneficiary to devote what is superfluous to his own maintenance in favour of pious and charitable objects, without adverting to the claims of the parish itself. There is no objection to this manner of speaking, if it is a question of a benefice to which no other material burdens are attached beyond the support of the beneficiary. But to speak thus of a parochial benefice rather resembles the attitude of a married man who regards his wife's dowry[7] as existing solely for his own support, except for what he cares to give her out of charity after providing for himself.

Λ modern canonist who best expresses the practical consequences of holding a correct view of *dos beneficii,* in our modern legislation, is Pistocchi. In his view, a beneficiary possesses the usufruct solely of those revenues of the benefice necessary for his proper maintenance; over the rest he has the right and the duty of disposal but not usufruct, and there is room for the application of canon 1534 and the sanctions of canons 2346, 2347, if he fails in his duty. Ina word, "Dos enim beneficii non est solum pro beneficiario, jure novo potissimum."[7] The same view is held by[7] the commentator in *Apollinaris* already quoted: "Utrum hos fructus (superfluos) faciat prius suos, ct deinde obligetur clericus ad eosdem his modis erogandos, an potius ne suos quidem faciat, sed teneatur tantum administrare ac distribuere

[1] d'Annibalc, *Tbeol. Moralis,* III, η. 6j.
[2] Pistocchi, *De Re Bene/îriali,* cd. 1928, p. 14.
[3] *A.A.S.,* 1932, XXIV, p. 147·
[4] *Apollinaris,* 1932, V, pp. 136, 149.
[5] Bridgctt, *Blessed John l'isher,* p. 61.
[6] *Thesaurus Casuum,* Lib. IV, cap. 6.
[7] Pistocchi, *op. fit.,* p. 414.

hac ratione, Codex non decernit; et antea disputatum est atque, si quid opinamur, potest adhuc disputari. Nihilominus quamvis maximae notae doctores adhaereant primae sententiae, nobis probare fatemur alteram, tum quia magis congruit naturae dotis tum etiam quia magis favet ecclesiae, minus autem auri sacrae fami, quae perniciosissima numquam non fuit."[1]

It is open to the Ordinary, particularly in places where the *dos* may consist of miscellaneous offerings given for all sort of purposes besides the support of the priest, to determine what is *honesta sustentatio,* either in the decree of erecting the benefice or afterwards.

### 533.—Benefice Constituted by Offerings

*How is the distinction between "dos" and "fructus" determined in the case of benefices enjoying no capital endowment?*

The distinction between *dos* and *fructus dotis* is quite apparent in those benefices which consist of revenues derived from capital funds or property. But canon 1410 enumerates, in addition, as constituting the *dos beneficii,* "certae et voluntariae fidelium oblationes quae ad beneficii rectorem spectent" and "iura stolae intra fines taxationis dioecesanac vel legitimae consuetudinis". They are types of endowment, modern in origin, which enter into the constitution of a benefice when capital funds or property is lacking, and they represent the commonest form of parochial benefice, or its equivalent, in this country, in many parts of the British Empire and in the United States of America.

One or two difficulties arise from this type of endowment. It is, in the first place, obvious that there is no real distinction between *dos* and *fructus* in these cases; the "expectancy", considering the number of people and their financial status, might be considered as the *dos,* their actual gifts the *frnctus.*

A further theoretical difficulty arises if it is asked how and when the voluntary offerings of the faithful can ever be regarded as certain.

I know of no completely satisfactory solution to either of these theoretical points. Cf. *S.C. Cone., zz* August, 1874 *(Fontes,* n. 4229); *Jus Pontificium,* 1925, p. 40; *S.C.Conc.,* 16 July, 1927 *(Periodica,* 1929, p. 45).

Of more practical consequence is the phrase qualifying the offerings, namely, "quae ad beneficii rectorem spectent". In some parts, as in Ireland, it is clear beyond dispute that certain offerings belong to the rector for his support and for no other purpose. But in other places it is not at all evident that any offerings arc given specifically for the support of the rector; the faithful give offerings at Mass and at other times, not solely for the support of the priest, but also for the maintenance of the church and of divine worship in general. In these places, though the theoretical difficulty remains, it is for local law to determine in practice the amount due to the parish priest from the general offerings or revenue of the parish. This sum, together with his support at the presbyter}', must be reckoned as the beneficial "fructus"; the remaining revenues are the parochial patrimony of which the parish priest is merely the administrator.

[1] *Lac. fit.,* p. 150.

## 534.—Benefices Reserved to the Holy See

*Parish X becomes vacant through the death of the parish priest, a domestic prelate. The parish priest of Y is commendedfor X and the parish priest of Zfor Y. Are all three benefices thereby reserved to the Holy See?*

Canon 1431: lus Romano Pontifici est beneficia in universa Ecclesia conferendi eorumque collationem sibimct reservandi.

Canon 1434: Beneficia Sedi Apostolicae reservata ab inferioribus invalide conferuntur.

Canon 1435, §1: . . . sunt reservata Sedi Apostolicae. . . .

i. Omnia beneficia, etiam curata, quae vacaverint per obitum. . . . Familiarium, etiam honoris tantum, Summi Pontificis tempore vacationis beneficii.

4. Denique beneficia quibus Romanus Pontifex per se vel per delegatum manus apposuit his qui sequuntur modis: ... si beneficiarium promoverit, transtulerit. . . .

All three are reserved to the Holy See: X obviously from canon 1435, §1, i. The reservation of Y and Z is less obvious, perhaps, but is equally certain from canon 143 5, §r, 4. From the fact that the vacancy in X is being filled by the promotion or translation of the parish priest of Y, the supreme pontiff has thereby "laid his hands" upon Y, which automatically becomes reserved. Similarly with Z.

If it is thought that this process is, perhaps, a little unreasonable, since certain fees arc payable to the Holy See on these occasions, it may be observed, firstly, that papal reservations in post-Code law arc less than they previously were; formerly all vacancies occurring in nine out of the twelve months of the year used to be reserved to the Holy See, though the number was often reduced by arrangement or concordat. Secondly, it should be noticed that this multiplication of reserved benefices can be avoided by presenting an unbeneficed cleric, a seminary professor for example, for the vacancy in X. Cf. commentators on canon 1435, and especially *PAmi du Clergé,* 1933, p. 2J.

*Is a "movable" parish to be considered "manual" and therefore not subject to the law of reservation?*

Canon 1435, §2: At nunquam sunt reservata, nisi id expresse dicatur, beneficia manualia. . . .

Canon 411: Beneficia ecclesiastica dicuntur ... 4. *Manualia, temporaria seu amovibilia,* vel *perpetua* seu *inamovibilia,* prout conferuntur revocabiliter vel in perpetuum.

In *The Jurist,* 1942, II, p. 385, Dr Haydt defends a point of view which is of considerable practical importance in the matter of benefices reserved to the Holy See. From canon 1435 certain parochial benefices are thus reserved; but manual benefices arc amongst those excepted, and arguing from the definition of a manual benefice in canon 141 1, as well as from other sources, it is maintained that the *paroecia amovibilis* is of this character. In a vast country like the United States of America, where, judging from the

lists published in *A.A.S.,* domestic prelates must number thousands, the point is of great interest. For even though a domestic prelate very likely is an immovable parish priest, and therefore certainly enjoys a benefice which will be reserved to the Holy See when he vacates it by death or otherwise, the priest promoted to the vacancy may come from a movable parish and likewise the priest who succeeds him and so on to the end of the series of changes; from canon 1435, §1, 4 *(si beneficiarium promoverit),* all these are reserved unless they are excepted on the title of being merely "manual".

The difficulty about this view is that a manual benefice is always "ad nutum episcopi", whereas the possessor of a movable parish is removable, not in an arbitrary manner, but in accordance with the process of canons 2157-2161. Nevertheless, we think the view defended by Dr Haydt is correct, and we have seen an unpublished decision of the *Dataria* which supports it. It is also taught by the distinguished American canonist Dr Bcste in his *Introductio* (1946), p. 725.

For the whole law on reserved benefices the instruction of the *Dataria,* i January, 1942, should be consulted.[1]

## 535.—Occult Simony

*How should the confessor deal with the case of a parish acquired by occult simony, in which the penalties have certainly been incurred by the beneficiary, tbe other party to the transaction being dead?*

Canon 729: ... si simonia committatur circa beneficia . . . subsequens provisio omni vi caret.... Quare: 1. Ante quamlibet iudicis sententiam res simoniace data et accepta . . . restitui debet, et beneficium, officium, dignitas dimitti; 2. Simoniace provisus non facit fructus suos. . . .

Canon 1435, §1, 3: . . . beneficia . . . sunt reservata Sedi Apostolicae . . quae invalide ob simoniae vitium collata fuerint;

Canon 2392: Firmo praescripto can. 729, delictum perpetrantes simoniae in quibuslibet . . . beneficiis. . . . 1. Incurrunt in excommunicationem latae sententiae Sedi Apostolicae simpliciter reservatam; ... 3. Si clerici sint, praeterea suspendantur.

The legislation concerning simony in acquiring a benefice is perfectly clear if the matter has been brought to the external forum. In the above case, however, it is entirely occult, and since no one is bound to denounce himself or destroy his own good name, the whole matter must be adjusted in the internal forum of Penance.

The excommunication may be absolved under the terms of canon 2254, or by a confessor having faculties *iniunctis de iure iniungendis.* If restitution of the fruits of the benefice is morally impossible, it may be excused, at least for the time being, like any other similar obligation, or composition may be sought from the *Sacred Penitentiary.* But the benefice itself must be resigned, or a serious promise given to that effect, before absolution is granted. Wernz-Vidal: "Pariter in conscientia ante sententiam iudicis dimitti debet beneficium, officium, dignitas anticanonicc et invalide accepta. Quae praescriptio firmat id quod est ex natura rci."[3] For a

[1] *A.A.S.,* 1942, XXXIV, p. itj.
[3] *ha Car.onicun,* IV, §17.

benefice can be resigned without involving necessarily any self-defamation: if it is thought to do so, owing to special circumstances, recourse should be had to the *Sacred Penitentiary.* It seems to us, in a wholly occult case of this kind, that the terms of canon 1435 are inoperative, since their observance would involve some danger to the confessional seal. The ecclesiastical jurisdiction of the beneficiary is valid from canon 209, and the suspension of canon 2392 *being ferendae sententiae* is not relevant to the case.

## **536.—** Stole Fees

*Does this term imply that a definite stem, customary in the district, may be asked on tbe occasion of a priestly ministration?*

Canon 463, §1: Ius est parocho ad praestationes quas ei tribuit vel probata consuetudo vel legitima taxatio ad normam can. 1507, §1.

§2. Potiorcs exigens ad restitutionem tenetur.

§4. Gratuitum ministerium ne deneget parochus iis qui solvendo pares non sunt.

Canon 736: Pro administratione Sacramentorum minister nihil quavis de causa vel occasione sive directe sive indirecte exigat aut petat, praeter oblationes de quibus in can. 1507, §1.

Canon 1507, §1: Salvo praescripto can. 1056 (dispensations) et can. 1234 (funeral dues), praefinire taxas .... occasione ministrationis Sacramentorum vel Sacramentalium, in tota ecclesiastica provincia solvendas, est Concilii provincialis aut conventus Episcoporum provinciae; sed nulla vi praefinitio eiusmodi pollet, nisi prius a Sede Apostolica approbata fuerit.

Canon 2349: Recusantes praestationes legitime debitas ad normam can. 463, §1, 1507, prudenti arbitrio Ordinarii puniantur, donec satisfecerint.

Canon 2408: Taxas consuetas et legitime approbatas ad normam can. 1507, augentes aut ultra eas aliquid exigentes, gravi mulcta pecuniaria coerceantur, et recidivi ab officio suspendantur vel removeantur pro culpae gravitate, praeter obligationem restituendi quod iniuste perceperint.

*II Westm.,* viii, 16: Dum igitur prohibemus ne aliquid petatur (multoque magis exigi) ante Baptismatis vel Matrimonii celebrationem aut etiam post celebrationem veluti de iure, remittimus prudentiae Episcoporum ea in suis dioecesanis Synodis hac de re statuere quae consuetudinibus et conditioni locorum visa fuerint magis apta.

(i) The term "stole fee", in its strict meaning, can imply that a certain definite sum is payable to the priest on certain occasions. Both from the word used, *ins,* in such canons as 1097, §3, and 1410, and from the penalties to which those are liable who cither refuse to pay or who demand more than the sum fixed by law, it is clear that the priest has a just right to these sums; he may accept them, when they arc offered, and demand them if they arc withheld. An obvious and very important limitation of this right is the obligation of ministering to the poor gratuitously, expressed as a general principle in canon 463, §4, and applied specifically in such canons as 1235, §2, in regard to funeral dues.

A wider meaning of the term "stole fee" implies an offering which is not obligatory, in the sense defined above, but quite free and spontaneous.

To such offerings a priest has no strict right; he may accept them when offered, but canon 736 forbids him to demand them for any reason whatever, whether directly or indirectly. Unless it can be shown that custom in some localities has given the stole fee a strict meaning, or unless the local Ordinary has determined the sum in those matters which arc within his competence, it is our opinion that in this country stole fees are of the free spontaneous kind.

(ii) Canon 1507 requires a uniform amount to be fixed for the whole province, and *S.C. Cone.,* 11 December, 1920, declined to sanction maximum and minimum fees.1 For the most part these fees, determined by provincial law, relate to baptisms, marriages and funerals, but there is no reason in principle why they should not cover other priestly ministrations as well. In this country we have no provincial stole fees precisely of this kind.

Using the power conceded to them by the Westminster Council, many Ordinaries have fixed the stole fees for marriages and baptisms. Cf. *Lancaster Statutes,* 1945, n. 143; *Middlesbrough Statutes,* 1933, n. 92. Bearing in mind the rule of canon 1507, it is our opinion that these diocesan fees are, at the most, a declaration of what the customary law is in the district. In other dioceses, the sum is not a stole fee in the strict sense at all. Thus *Liverpool Synod XXIII,* 1945, n. 44: "Rogare taxam antequam sacerdos ritum sacrum perficiat nunquam licet; neque etiam postea ut ius exigere. Decet tamen ex consuetudine apud nos probata, eos qui solvendo pares sunt. . . ."

In dioceses which have no guidance whatever from the Ordinary on this matter, the existence of a customary law is not indeed ruled out, but it is difficult to prove, and our inclination is to disregard it in favour of all stole fees being free and spontaneous.

No doubt, at some future date, English Provincial Councils will use their right and legislate as in canon 1507, but it is very arguable whether any interference with the existing free and spontaneous character of these stole fees would be to the general advantage. Cf. Dr Brys in *Collationes Bragenses,* 1924, p. 132; *Jus Pontificiam,* 1930, p. 201.

## 537.—Church Dances

*Apart from regulations of local Ordinaries, is there any law of the Church prohibiting priests from organising dances in aid of religious and charitable funds?*

(i) The regulations of local Ordinaries arc laws of the Church, which bind their subjects in exactly the same degree as the common law of the Church, the only difference being that they bind only within the territory of the diocese, whereas the common law is in force everywhere. Examples of local laws forbidding the clergy to organize dances for pious purposes may be seen in *Liverpool Synod XXIII,* 1945, n. 29; in the *Middlesbrough Statutes,* 1953, n. 22; and in the *Maynoolb Plenary Council,* 1927, n. 49. In many places where such express prohibitions exist the interpretation officially countenanced is that the dances may be arranged by a lay committee responsible to the priest for the proper conduct of the proceedings. On the

1 *A.A.S.,* 1921, XIII, p. 350.

other hand, the decrees sometimes prohibit the use of school or parish hall for mixed dances.

(ii) The Council of Trent, Sess. xxii, c.l, *de Ref.* in general terms forbade clerics to take part in dances, and in similar general terms canon 140 of the Code forbids the attendance of clerics (ne intersint) at dances and other similar amusements which are unbecoming the clerical state. It is sufficiently evident that the spirit of the law is against the practice of clerics arranging dances, even though they are perfectly becoming for lay people, and even though clerics themselves take no part in them and are not even present at them. But we do not know of any express decree which directly forbids for the whole Church what many local Ordinaries forbid in their dioceses. The only Roman decision of which wc are aware is that of the *Sacred Consistorial Congregation,* 51 March, 1916, which legislated for North America by ordering canon 290 of the Third Council of Baltimore to be strictly observed. "Quare cognoscentes Emi. S.C. Consistorialis Patres, auditis pluribus locorum Ordinariis, et re multo cum studio examini subiecta, censuerunt standum omnino esse sanctionibus a Concilio Baltimorensi III statutis: et probante Ssmo D.N. Benedicto PP. XV, decreverunt, sacerdotes quoslibet sive saeculares sive regulares aliosque clericos prorsus prohiberi quominus memoratas choreas promoveant et foveant, etiamsi in piorum operum levamen et subsidium, vel ad alium quemlibet pium finem; et insuper clericos omnes vetari, quominus hisce choreis intersint, si forte a laicis viris promoveantur."[1] This was later declared to include those dances which were not protracted late into the night or which accompanied picnics.[2]

## 538.— Diocesan Collections

*Would you indicate the texts of the common law which authorise the diocesan collections in parish churches at stated times?*

Canon 1496: Ecclesiae ius quoque est, independens a civili potestate, exigendi a fidelibus quae ad cultum divinum, ad honestam clericorum aliorumque ministrorum sustentationem et ad reliquos fines sibi proprios sint necessaria.

Canon 1503: Salvis praescriptis can. 621-624, vetantur privati tam clerici quam laici sine Sedis Apostolicae aut proprii Ordinarii et Ordinarii loci auctoritate, in scriptis data, stipem cogere pro quolibet pio aut ecclesiastico instituto vel fine.

Canons 1499-1507, under the title "Dc Bonis Ecclesiasticis Acquirendis", mention various taxes and tributes which the Ordinary is entitled to receive from parish priests. Actually, the only canon which covers the above question is 1503, which, by denying the right to private persons, implies that the Holy Sec and Ordinaries possess the authority to order collections to be made for religious purposes. The commentators establish the right in their explanations of this canon, e.g. Coronata, *institutiones,* II, §1042: 'Ordinarius non solum permittere, sed et praecipere potest ut parochi pro

[1] *Fontes,* n, 2092.
[2] 1917, X, p. 17·

aliquo determinato fine aut opere pio stipem intra vel extra ecclesiam paroecialem cogant." Cf. also Cappello, *Jus Canonicum,* **III**, §10. Rectors of churches are bound, of course, to obey these episcopal injunctions in the manner determined by local regulations.

The eagerness of a parish priest to have the collections as ordered is tempered by the experience that the ordinary parochial collection is always correspondingly lessened whenever a diocesan collection takes place, and that his just expectation of receiving the wherewithal for his support, and for parochial purposes, suffers some set-back. This raises the important question of what constitutes the *dos beneficii* and *fructus beneficialis* in an English parish which is entirely dependent on the offerings of the faithful. Now, if we accept, for the sake of argument, the untenable view that all the church collections belong to the beneficiary, the law nevertheless permits the Ordinary to make all kinds of demands upon this revenue: "tributum seu taxa pro seminario" (canons ijoj, 1355,1356); "cathedraticum" (canon 1504); "pensio beneficialis" (canons 1505,1429); "exactio extraordinaria et moderata (canon 1505); "tributum in bonum dioecesis" (canon 1506). Apart from the small *cathedraticum,* Ordinaries are not accustomed, we believe, to claim these rights in England. But they are accustomed to demand special collections for diocesan purposes, many of which, owing to the centralization universal in modern times, arc for charities such as schools, orphanages, and other works which indirectly benefit the parish; other diocesan collections, such as Peter's Pence, Foreign Missions and Holy Places, are made at the bidding of the Holy See, rather than on the authority of the Ordinary. Following the commentators, we have connected the right to order these collections with canon 1503 rather than with those canons which authorize demands on the fruits of a benefice. If, as may well be, the parochial revenue suffers heavily on these occasions, it could be explained to the people that the diocesan collection is something extra. A seminary professor is unskilled in such things, but it is possible, no doubt, to find some means of obeying the episcopal injunctions whilst leaving intact the ordinary revenue of the parish.

### 539.—Box Monies

*Three collection boxes in a church labelled "For the Poor", "St Antony's Bread" and "For the Shrine of Saint N.N." receive liberal contributions from the faithful, but they cannot be persuaded to give money for reducing the huge debt on the parish school. Would a priest be justified in putting the money from these boxes to reducing the debt, on the plea that the schools exist for the poor and are dedicated to the saint venerated at the shrine?*

The question to be decided is not whether the faithful are unreasonable in contributing to one charitable purpose and neglecting a more important one, but what was their intention in placing money in these boxes. It is the duty of the priest to apply money to the purpose for which it was offered by the donors. There cannot, I think, be any doubt that offerings in the poor box arc placed there for the purpose of giving corporal relief to necessitous persons. To apply the money to any other purpose is a violation of justice, both in regard to the donor and the poor. The same is true, so

far as I can discover, in the ease of St Antony's Bread; it is practically a synonym for poor box. The money contributed for the shrine of Saint N.N. is given primarily for the material adornment of the shrine, but the phrase is sufficiently vague to cover other pious works performed in the saint's honour, provided that the first charge is the upkeep of the shrine. Pilgrims who visit famous shrines may deposit offerings which, in the aggregate, are far in excess of what could be spent on the edifice, even on the most lavish estimate. One may suppose that it is their implied intention that the excess should be devoted to charitable works performed in honour of the saint. In any case, doubt could easily be removed by labelling the box "In Honour of Saint N.N.".

## **540.**— Cathedraticum

*What is the legality in England at the present time of the cathedraticum, bearing in mind that the Code, and S.C. Cone.,* 15 *and* 14 *March,* 1920, *define it more restrictively than the Westminster Synods?*

Canon 1504: Omnes ecclesiae vel beneficia Jurisdiction! Episcopi subiecta, itemque laicorum confraternitates, debent quotannis in signum, subicctionis solvere Episcopo cathedraticum seu moderatam taxam ad normam can. 1507, §1, nisi iam antiqua consuetudine fuerit determinata.

*III Westm.,* xvii: . . . decernimus aequalem debere in posterum esse solutionem cathcdratici in omnibus Dioecesibus et constare medietate librae sterlingae . . . sequentes viros Ecclesiasticos decernimus ad illud solvendum teneri:

(1) Singula Capitula ex communi massa.
(2) Presbyteri titulo Missionis ordinati, qui stipendia ab aliqua Ecclesia vel Oratorio recipiunt.
(3) Qui curam gerunt animarum.
(4) Qui praesunt Ecclesiis vel Oratoriis publicis, nisi specialem exemptionem probare valeant.

*S.C. Cone.,* 15 and 14 March, 1920,[1] a resolution summarized by Ayrinhac, Bouscaren and others, discussed the legality of introducing into French dioceses a tax proportioned to the numbers of parishioners in each parish. The resolution was "Prout exponitur, non expedire", and the reason given was that the proposed tax was not the *cathedraticum* as defined in canon 1504, namely a uniform amount from the entities mentioned therein paid as a sign of subjection, but a tax imposed for the support of the episcopal curia.

(i) On extrinsic grounds we cannot perceive any good reason for supposing that the legislation of the Westminster Synod is out of harmony with that of the Code. The amount to be paid is determined by provincial law, as required by canon 1504, and the Holy See has decided that the conciliar legislation of the old province applies, in principle, to the new English provinces. The details of the prc-Code law have been promulgated afresh since the Code in certain English diocesan synods, which have presumably been approved by the Holy See. In France, on the contrary, the proposed tax was a novelty to which the clergy were not accustomed, and the Sacred

[1] *A.A.S.,* 1920, XII, p. 444-

Congregation was of the opinion that the curial expenses should be met from the fund known as "Denier du Culte". We in this country are accustomed to the *cathedraticum* and it is very unlikely that any established tax or means of revenue would be disturbed by the Holy See.

(ii) Examined intrinsically, the amount fixed by the Westminster Synod, ten shillings, is exactly that which the 1920 Resolution mentions as lawful: "Antiquitus in duobus solidis aureis constituta, in Cone. Rom. a. 1723, xx julios excedere (circ. 10 francos) prohibeatur, salvis consuetudinibus favorabilioribus iam inolitis." It was amongst the objections to the newly proposed French tax that this sum would often be exceeded.

As regards the persons or entities enumerated in the Westminster Synod, nn. i, 3 and 4 clearly correspond to those enumerated in canon 1504, n. 3 being taken as equivalent to parish priests. Under n. 2 are included assistant priests (curates, vicarii co-operatores), convent chaplains and the like, and it is probably on this title that our questioner detects some divergency between the Synod and the Code. For it would appear that a church with four assistant priests is being taxed in proportion to the number of clergy serving it, a method which is deprecated by the Holy See in the Resolution of 1920.

To this criticism it may be answered, firstly, that the word "beneficia" in canon 1504 is not restricted to parochial benefices, nor to those which are styled "perpetual", as the resolution of 1920 notes. "Manual" benefices are included, and it is canonically possible, in certain cases, to regard an assistant priest as enjoying a benefice.[1] It is extremely hazardous to decide, at the moment, what is and what is not a benefice in this country.

It may be answered, secondly, that the resolution of 1920 was given for local reasons and conditions existing in France, and docs not necessarily extend to other places. Examples may be cited of the Holy See justifying a tax, not contained within the terms of canon 1504, as being *ad instar cathedratici.*[2] Everyone is rightly loth to pay more in taxation, whether civil or ecclesiastical, than he is strictly and legally bound to do, but we are of the opinion, taking the whole subject by and large, that the clergy are favourably treated in this country and that the bishops rather generously refrain from making demands which they arc entitled to do from such canons as 1355, 1356, 1505, 1506.

### **541.—** Salary of "Vicarius Oeconomus"

*Maj it be held that, in principle and in the common law, the "vicarius oeconomus" is entitled to the same emoluments or salary as a parish priest?*

Canon 472. 1: Vacante paroecia: Ordinarius loci in ea quamprimum constituat idoneum vicarium oeconomum, de consensu Superioris, si de religioso agatur, qui eam tempore vacationis regat, assignata eidem parte fructuum pro congrua sustentatione.

Canon 473, §1: Vicarius oeconomus iisdem iuribus gaudet iisdemque officiis adstringitur, ac parochus, in iis quae animarum curam spectant;

[1] Cf. canon 1412.1 and Pistocchi, *De Beneficiir,* p. 32.
[*] Cf. Bcstc, *Introduetio,* p. 74J.

nihil tamen ipsi agere in paroecia licet, quo praeiudicium afferre possit iuribus parochi aut beneficii paroecialis.

§2. Oeconomus novo parocho vel oeconomo successori coram vicario foraneo vel alio sacerdote ab Ordinario designato tradat elavem archivi . . . ct rationem reddat accepti et expensi tempore administrationis.

Canon 1481: Deductis cuiuslibet generis expensis et salvo praescripto can. 472, n. 1, fructus beneficii vacantis pro altera dimidia parte accrescunt doti beneficii vel massae communi, pro altera cedunt fabricae ecclesiae seu sacrario, salva legitima consuetudine qua fructus omnes in bonum commune dioecescos erogentur.

(i) It is clear from the above canons that, in the common law, the administrator of a vacant parish is not entitled, in principle, to the same emoluments as the parish priest. On the contrary, having received what the Ordinary deems to be a fitting support, the administrator must deal with the surplus as directed by canon 1481.

(ii) The common law supposes a happy state of affairs which rarely exists now in any place. Thus Brys, commenting on the application of this law to the conditions obtaining in Belgium, observes: "Haec tamen juris communis praescriptio apud nos haud applicanda est, nec ab Ordinario assignatur pars congrua ex fructibus, cum dos quasi-beneficialis seu pensio a Gubernio civili soluta vix congrua sit et proin non dividenda."1

The same may usually be said of administrators of vacant parishes in England. The administrator, if wholly employed in this work, will enjoy whatever emoluments (lodging, support, salary) are normally received by the parish priest, since these are scarcely ever in excess of what is described as "congrua sustentatio". Moreover, the point cannot be defined very exactly, since, in our present conditions, the exact constitution of the English parochial benefice is itself not completely certain. Nevertheless, the right of the Ordinary, as in canon 472.1, may be exercised in exceptional cases, by the assignment of a proportion of the revenue to the administrator, the surplus to go to parish funds, and the administrator has no grievance in receiving a less generous treatment than the parish priest.

## 542.—Remuneration of Visiting Priest

IPTw/ Zr *deemed a suitable offering for a priest who, having already celebrated in his own churchy says his second Mass at a neighbouring church?*

Unlike the Mass offering which is fixed by diocesan law, there is usually no local law regulating what is due to a priest on the extrinsic title mentioned at the end of canon 824, §2.

If there is no local law, it is a matter for arrangement between the rector of the church and the visiting priest or his superior. What is "suitable" will depend on the income both of the church in which the Mass is said and of the priest who celebrates therein at the rector's request. Probably the best solution of this problem is to say that the remuneration must be reasonable, a most useful estimate even though it is vague. In the event of the rector and the visiting priest being unable to reach an amicable understanding

1 *Collât. Brugen.,* 1929» P· 399·

of what is reasonable, and if no other priest can be obtained for the essential services of the church, it is a matter which could properly be referred to the Ordinary's judgement.

## 543.— Out-Door Collections

*Has a parish priest the right to forbid out-door collections by religions and others within his parish? Whilst wishing their good works every success, be may feel that tbe parish is already heavily burdened with parochial and diocesan collections.*

Canon 621, §i: Regulares, qui ex instituto mendicantes vocantur et sunt, eleemosynas in dioecesi, ubi eorum religiosa domus est constituta, quaerere valent de sola Superiorum suorum licentia; extra dioecesim vero indigent praeterea licentia scripto data ab Ordinario loci in quo eleemosynae colligere cupiunt.

§2. Hanc licentiam Ordinarii locorum, praecipue dioecesium finitimarum, nisi gravibus et urgentibus de causis, ne denegent neve revocent, si religiosa domus ex mendicatione in sola dioecesi, in qua est constituta, vivere nullo modo possit.

Canon 691, §2: Potest (Associatio legitime erecta) oblationes recipere, et receptas erogare ad pios ipsius associationis usus, salva semper offerentium voluntate. §3. Nulli associationi eleemosynas colligere licet, nisi id aut statuta permittant, aut necessitas postulet, et loci Ordinarii consensus accedat ac servetur forma ab eodem praescripta. §4. Ad eleemosynas extra territorium colligendas uniuscuiusque Ordinarii venia, scripto data, requiritur.

Canon 1503: Salvis praescriptis can. 621-624, vetantur privati tam clerici quam laid sine Sedis Apostolicac aut proprii Ordinarii et Ordinarii loci licentia, in scriptis data, stipem cogere pro quolibet pio aut ecdesiastico instituto vel fine.

The mendicant Orders may beg without the permission of the local Ordinary within the diocese in which the religious house is erected. In other dioceses they need the authorization of the Ordinary. The term "mendicant Order" is of strict interpretation, c.g. discalced Carmelites or Capuchins, and docs not include such Orders as the Dominicans, as the *Code Commission* has expressly determined.1 By authorizing a house of mendicants in the diocese, the Ordinary, by that fact, accepts the laws which govern their constitution, and no special permission to seek alms is required.

Non-mendicant Orders and all other associations may receive alms spontaneously offered, but they may not solicit them without the permission of the local Ordinary, subject to the detailed prescriptions of canon 622.

A parish priest, therefore, is entitled to assure himself that the law requiring the Ordinary's permission has been observed. He could also make representations to the Ordinary on the subject, if he thought fit. But he cannot forbid a collection if it has been authorized by the Ordinary. It is the custom of certain bodies to ask the parish priest's permission before proceeding around his parish, but this is a matter of courtesy rather than of law.

1 16 October, 1919.

# IV. RELIGIOUS

## §1. POSTULANCY AND PROFESSION

### 544.— Advertising for Vocations

*Is there any objection in principle to advertising in the press with a view to obtaining candidates for religions communities?*

Canon 538: In religionem admitti potest quilibet catholicus qui nullo legitimo detineatur impedimento rcctaque intentione moveatur, et ad religionis onera ferenda sit idoneus.

*S.C. Rtlig.,* 8 March, 1922; *A.A.S.,* XIV, 161: De quinquenniali relatione:

n. 10. Num speciali aliquo modo seu industria ad nomen Instituto dandum quis allectus fuerit; et praesertim num ephemeridum ope moderatores hunc in finem usi sint.

n. ii. Num praeterea exquisita fuerit sufficiens notitia circa eorum indolem et mores quoties id necessarium erat vel opportunum.

It is rather remarkable that the Code itself never uses the term "divine vocation" of the religious life, but restricts its use to the priesthood; since the discussions which arose from Lahitton's thesis, it is certain that a vocation to the priesthood is essentially the call of the bishop, and there is nothing exactly resembling this in a call to the religious life. Nevertheless, the term "divine vocation" is rightly used of the religious life, both unofficially by the spiritual writers and officially in such documents as *Fontes,* n. 4596.

(i) There is no objection in principle to seeking postulants for religious institutes by employing human means, including press advertisements, provided it is done prudently. For if a special, internal and extraordinary inspiration of the Holy Spirit is not necessary for a true vocation to the priesthood, *afortiori* it is not required for the religious life, although it may easily be admitted that, both for the priesthood and for the religious life, there exists in most cases this special internal attraction of divine grace. All that is essentially required is fitness for the burden which is being assumed and a right intention. "Sufficit vero vocatio divina per illuminationem et motionem gratiae ordinariae, quam homo percipit ratione fide illustrata. Haec autem vocatio interna ordinaria, si spectetur ex parte Dei vocantis, est operatio qua Deus manifestat et cxcquitur consilium divinae suae providentiae determinatum hominem invitandi ad statum perfectionis, seu statum religiosum amplectendum, ciquc congrua auxilia praeparandi ad ferendas speciales obligationes huius status."[1]

Moreover, since the qualifications vary in different institutes, there can be no objection in principle to stating, in these advertisements, that candidates must possess the desired qualifications; for example, a teaching certificate.

(ii) Accordingly, apart from what the statutes of individual institutes

[1] *Collât, lirugen.,* 1937, P· 2J7-

may determine, there is no law against advertising for postulants. On the contrary, nn. 10 and it of the Quinquennial Relation assume that this practice exists in certain institutes, and the Holy See is concerned merely with securing some control or check upon it by demanding information. For the practice is liable to abuse, in so far as unsuitable candidates may be obtained from advertisements; on the other hand, the whole character and fitness of these subjects will be tested in the novitiate, and a faulty or inadequate intention will be made "right". Abuses are always liable to enter into human affairs, but there seems, on the whole, less likelihood of this happening when postulants are attracted by advertisements than when secured by some other human means. Thus, *Fontes,* n. 4599, speaks of schools "in quibus puellae speciali cura in spem amplectendae vitae religiosae educantur". One who replies to an advertisement is perhaps more likely to be acting with a right intention and with complete freedom than one who has been educated from childhood with a view to the development of a religious vocation.

### **545.**— Admission into Novitiate

*Is it a correct interpretation of canon* 542, 1, *that the words "qui sectae acatholicae adhaeserunt" apply to all converts who have been, at any time, members of an heretical sect?*

Canon 542: Firmo praescripto can. 539-541, aliisque in propriis cuiusque religionis constitutionibus, i°. Invalide ad novitiatum admittuntur: qui sectae acatholicae adhaeserunt. . . .

The *Code Commission,* 16 October, 1919, ad 7, decided that the law is to be understood as applying only to those who have fallen away from the faith and joined a non-Catholic sect, but not to those who, moved by the grace of God, have been reconciled to the Church after having been born in heresy or schism. A further point was not settled by the Commission, namely, whether the words apply to those who have been baptized in infancy as Catholics, and brought up, through the neglect of parents or guardians, as non-Catholics. There is sufficient authority for deciding that the law docs not apply to them: "Quae Commissionis declaratio cos quoque videtur ob paritatem rationis comprehendere, qui licet catholice baptizati ab infantili aetate in hacrcsi educati sunt, si postea ad catholicam fidem convertantur."[1]

By "sect" in this connexion, on analogy with the *Code Commission* reply, 30 July, 1934, must be understood an atheistical body as well as heretical bodies.

### **546.**— Examination before Profession

*Is the priest who functions as chaplain and ordinary confessor permitted to act as the Ordinary}s delegate in conducting the canonical examination before religions profession?*

1 Wcxnz-Vidal, *lus Canoncum* 1Π, §246.

Canon 524, §1: In munus confessarii religiosarum et ordinarii et extra-ordinarii deputentur sacerdotes . . . nullam potestatem in easdem religiosas in foro externo habentes. §3. Confessarii religiosarum tum ordinarii tum extraordinarii interno vel externo communitatis regimini nullo modo sese immisceat.

Canon 552, §2: Ordinarius loci vel, eo absente aut impedito, sacerdos ab eodem delegatus, adspirantis voluntatem, saltem triginta diebus ante novitiatum ct ante professionem ut supra, diligenter et gratuito exploret, non tamen clausuram ingrediens, num ea coacta seductave sit, an sciat quid agat; et, si de pia eius et libera voluntate plane constiterit, tunc adspirans poterit ad novitiatum vel novitia ad professionem admitti.

This canonical examination is a grave obligation, the non-observance of which is punishable from canon 2412, §2. It is wholly a matter of the external forum, and the examining priest acts as the delegate of the Ordinary who exercises jurisdiction externally over the religious. It is, therefore, quite certain that the ordinary or extraordinary confessor may not lawfully be appointed to be the Ordinary's examiner. It may be held with Berutti[1] and many commentators that the other occasional confessors, provision for whom is made in the Code, are not excluded from the office. The chaplain, as such, may be appointed examiner if he is not the confessor.

## 547.—Religious Profession

*Officiating at a religious profession, I found that the custom was to say a formula of profession singly before the priest holding the Blessed Sacrament, which was received by the sister after pronouncing the words. The priest then passed to the next when the rite was repeated. Is this procedure liturgically in order?*

Canon 576, §1: In emittenda professione religiosa servetur praescriptus in constitutionibus ritus.

The many formulas and ceremonies connected with religious profession may be reduced to three categories: *(d) Professio in manus.* The novice kneels before the superior, and with her joined hands enclosed in the hands of the superior pronounces the formula of profession. This rite is considered to have originated in France at the beginning of the twelfth century under the influence of the idea of vassalage. It is employed in many modern institutes, and though usually taking place in the chapel, could be carried out in the chapter. *(/>) Professio super altare* is of Benedictine origin, and is in use amongst some institutes of Canons Regular. At the offertory the novice, after pronouncing the appropriate formula, signs the document on the altar and leaves it upon the corporal.[2] (r) *Professio super bostiam or intra Missam.* This is the custom in the Society of Jesus and, we believe, the commonest method in use today amongst religious institutes of women; it was employed by certain mediaeval military orders.

Not only is it perfectly correct but it is explicitly approved by the *of BJtes* for all professions *intra Missam.* This approval, dated 5 June, 1896, referred to the rite as described in a decree, I4~27

[1] *De Religiosi/,* §49.
[1] Ccrvia, *De Professione Religiosa,* p. 141.

August, τ894/ which is as follows: "Celebrans profitendum vota excepturus, sumpto Sanctissimo Eucharistiae Sacramento, absoluta Confessione ac verbis quae ante fidelium Communionem dici solent, Sacram Hostiam manu tenens, ad profitentes sese convertet: hi vero singuli, alta voce, professionem suam legent, ac postquam quisquis legerit, statim SSrhum Eucharistiae Sacramentum sumet."

**548.—Refused Renewal of Profession**

*The subjeci of a religions institute, in which temporary vows are renewed each year, after eightyears therein is refused renewal ofvowsfor what the superiors consider ajust cause. What remedy, if any, existsfor the subject in this case?*

Canon 637: Professus a vods temporariis, expleto votorum tempore, libere potest religionem deserere; pariter religio ob iustas ac radonabiles causas eumdem potest a renovandis votis temporariis vel ab emittenda professione perpetua excludere. . . .

(i) A few preliminary nouons must be recalled before answering the question. Amongst the variety of religious institutes in the Church, a few have only temporary vows which are renewed periodically, as mentioned in canon 488, 1. In the majority of institutes, however, the profession is perpetual, preceded by temporary vows for three years (canon 574, §1), or at the most for six years (canon 574, §2); at the conclusion of this period of temporary vows the religious must either make perpetual profession or leave the institute.

Dismissal whilst the subject is under vows is not the same thing as exclusion from renewal of vows: the latter is permitted for just and reasonable causes, as in canon 637; the former for grave causes with the procedure of canons 647 and 648, in the case of temporary profession, and in the case of perpetual profession for still graver causes and with the procedure of canons 649-668.

(ii) The grievance of the religious in the above question is readily perceived. For, if the institute had perpetual vows, it would be clearly illegal for the superiors to dismiss a religious after eight years' profession, except for the grave causes and with the procedure required by the law. Exclusion from renewal of vows is not, indeed, the same as dismissal, but, from the point of view of a subject who has belonged to an institute for eight years, its effects are very much the same, and it would appear equitable that something far more serious than the just and reasonable causes of canon 637 should be required after six years, exactly as they are in the case of all other religious who after six years make perpetual profession. On the other hand, it must be remembered that in institutes which have only temporary profession, renewable periodically, the subjects are perfectly free to leave at the close of each period: no sort of reproach attaches to their decision, no particular reasons arc required for their departure, and there is no procedure equivalent to that of secularization or dispensation from vows. It could be maintained that it is of the nature of such institutes that complete liberty should exist both for the subjects to leave at the expiry of temporary

1 Nn. 3856, 3912. Cf. *Ecclesiastical Review,* 1945, CX1I, p. 224.

vows, and for the superiors to refuse their renewal, no matter what length of time has elapsed since the first profession.

(iii) Except in one point which might bear indirectly on the situation, the common law of the Code makes no provision for the difficulty we are discussing. But, more likely than not, the constitutions of the institute do so, in which case one has only to abide by them: the subjects study this text during the novitiate: "scienti et volenti non fit iniuria".

The canon which does indirectly touch upon the point, perhaps, is 642, §2, which puts certain disabilities upon the ex-religious who has been under vows, even temporary vows, for six years, and has been dispensed therefrom. D'Ambrosio, in *Apollinaris,* 1931, p. 127, makes considerable use of this canon for supporting his view that, after more than six years' temporary profession, refusal to permit renewal of vows must be based on the reasons required for "dismissal" rather than on the just and reasonable causes of canon 637. There is a lot to be said for this opinion from the point of view of natural justice. Beste, however, notes in his *Introductio,* p. 440, that canon 642, §2, does not apply to a religious who has not been dispensed from his vows, but has merely not renewed them after six years.

Supposing, therefore, that the constitutions of the institute do not clearly determine what is to be done after more than six years, in a case where the subject wants to remain but the superiors refuse permission to renew the vows, the subject's only remedy is recourse to the Holy Sec based on the plea that, in such circumstances, the refusal is neither just nor reasonable. Vermeersch-Creusen, dealing with the somewhat similar situation where perpetual profession is, for proper reasons, refused, assures us that the practice of the Holy See favours the subject: "Fit tamen ut post dilatam diu (per sex, per decem annos) perpetuam professionem, haec demum negetur: quod non parum damnosum est personae religiosae quae, post tot annos in religione transactos, nesciat saepe quo se vertat in saeculo. Quare, *S.C. de Relig.* quando, propter peculiares rationes concedit ut perpetua vota diu vel indefinite differantur, exigere solet ut huiusmodi soror iam dimitti nequeat nisi propter causas quae dimittendae professae perpetuae sufficientes foret."[1]

### 549.— Seminarist Entering Religion

*Does the joint decree of two Rowan congregations,* 25 *July,* 1941, *requiring the permission of the Holy See before a seminarist may lawfully enter religion and ice versa", cover the case where a seminarist, without haring left the seminary, desires for lawful reasons to enter religion?*

Canon 544, §3: Si agatur de admittendis illis qui in Seminario, collegio vel alius religionis postulatu aut novitiatu fuerunt, requiruntur praeterea litterae testimoniales, datae pro diversis casibus a rectore Seminarii vel collegii, audito Ordinario loci, aut a maiore religionis Superiore.

*S.C Relig. & S.C. de Sem. et Universit.,* 25 July, 1941: . . . antequam familiae Religiosae adseribantur qui, quavis de causa, c Seminario egressi sint, Superiores religiosi ad Sacram Congregationem recurrant. . . .

*S.C. Relig.,* ii May, 1942 (private); Bouscaren, *Digest,* II, p. 166: The

[1] *Epitome* (1937). L 5βο6·

Sacred Congregation of Religious was asked by the General of the Society of Jesus: Whether the word *egressi* in the joint decree, 25 July, 1941, includes also seminarists who wish to pass from a seminary to our Society. *Reply.* The Decree of the Sacred Congregations of Religious and of Seminaries docs not concern those who leave a seminary or college in order to embrace a life of perfection in some religious institute, as sufficient provision is made for them in canon 544, §3.

A similar reply, 25 June, 1942, was given privately to the superior general of the Franciscans: *Commentarium pro Religiosis,* 1942, p. 235; *The Jurist,* 1946, p. 418; *Periodica,* 1943, P· 173: Haec S. Congregatio, mature perpenso dubio circa applicationem Decreti ... 25 July, 1941, rescribendum censuit prout rescribit. Decretum non respicere cos qui e seminario vel collegio exeant ad amplcctandam vitam perfectionis religiosae in aliquo Instituto Religioso, de quibus satis provisum in can. 544, par. 3. SSmus D. Noster approbavit... die n Mail, 1942.

This important interpretation of the original joint decree has removed the doubts to which the original document gave rise, though it may be observed that the interpretation does not issue jointly from both congregations. It must be admitted that the words "quavis de causa" are so embracing that many commentators took them in their literal meaning. It is now clear that there is at least one exception, which meets the point of the above question. The article on the subject in *Commentarium pro Religiosis,* written by Cardinal La Puma, Prefect of the Congregation of Religious, mentions other exceptions which do not come under the decree, 2$ July, 1941 : e.g. a seminarist who has completed his studies and who is not under any obligation to return to the seminary, or one who has been compelled to leave for military service.

The remedy for an Ordinary who is averse to losing a seminarist in major orders is in canon 542.2: "Illicite sed valide admittuntur (ad novitiatum): Clerici in sacris constituti, inconsulto loci Ordinario aut eodem contradicente ex eo quod eorum discessus in grave animarum detrimentum cedat, quod aliter vitari minime possit"1

## 550.—Nov-Catholic Religious Vows

IPTw/ *obligation exists of observing the three religious vows made by a person in a non-Catholic religious community who has since been reconciled to the Church?*

Canon 1307, §1 : Votum, idest promissio deliberata ac libera Deo facta de bono possibili et meliore, ex virtute religionis impleri debet.

§2. Nisi iure prohibeantur, omnes congruenti rationis usu pollentes, sunt voti capaces.

Canon 1308, §i: Votum est *publicum,* si nomine Ecclesiae a legitimo Superiore ecclesiastico acceptetur; secus *privatum.*

Canon 1309: Vota privata Sedi Apostolicac reservata sunt tantummodo votum perfectae ac perpetuae castitatis et votum ingrediendi in religionem votorum solemnium, quae emissa fuerint absolute et post completum decimum octavum aetatis annum.

1 Cf. *Prriodira,* 1924, XΠI, p. 145.

0* *Poenit.,* 29 November, 1842; *Pontes,* n. 642 5 : Protestons votum castitatis nccnon paupertatis et obedientiae emisit voce et scripto coram ministro anglicano; quaeritur utrum vim saltem voti simplicis et privati, aut vcluti irritum omnino sit habendum in casu conversionis ad religionem catholicam. *Resp.* Votum, de quo in precibus, esse simplex, et voventem teneri ad observantiam voti, si verum habuerit intentionem vovendi.

We cannot find the case discussed by any canonist, but its solution is quite simple from the canons quoted above. All baptized persons arc subject to the laws of the Church, unless they are exempted, and the obligations of a convert bound by vows before conversion arc determined exactly in the same way as those of a convert who had received the sacrament of matrimony before conversion. Non-Catholics, for example, are exempted from observing the form of marriage and it usually follows that their marriages contracted in heresy arc valid.

It is not possible for vows made in a non-Catholic religious community to be public, in the canonical sense of the word; the conditions for valid religious profession are absent. The vows are therefore private, and the person who made them is in exactly the same position as any Catholic who has privately vowed something to God. Assuming that sufficient knowledge and freedom[1] were present, the vows are valid and must be observed until the person is released, for example, by the lapse of time in the case of a temporary vow, or until he is dispensed by ecclesiastical authority.

From canon 1315, the Ordinary can dispense the vows of poverty and obedience. The vow of perfect and perpetual chastity, if made absolutely after the age of eighteen, is reserved to the Holy See from canon 1309. The private vow of chastity is also, it should be observed, an impediment, prohibiting but not invalidating marriage, from canon 105 8, until it is dispensed.

Another similarity with marriage exists. Religious profession which is invalid, because the external obligations of the law have not been observed, may be remedied by *sanatio* from canon 586, provided, as in the case of invalid marriage, the internal consent is continuing. The Holy Sec uses this power, both in favour of individuals and of whole communities, when the circumstances justify it,[2] but we know of no instance where it has been done in favour of a non-Catholic religious community.

## §2. RELIGIOUS RIGHTS AND DUTIES

### 551.— Duration of Superior's Oiiice

*According to canon* 505, *minor local superiors may not remain superiors in the same house longer than six consecutiveyears.*

*Does this canon apply only in the case ofa "domusformata" and does it not apply in the case ofa "domus nonformata" (c.* 488, 50), *though a "domus nonformata" is under special vigilance of the Ordinary* (617,2)?

*If canon* 50j *applies also to a "domus non formata", is the maintenance*

1 Guion 1307, §3.
• Cf. Ccrvia, *De Professione Religiosa,* p. 170.

*of the same superior beyond the six consecutive years not only unlawful but also invalid?*

Canon 505 : Superiores maiores sint temporarii, nisi aliter ferant constitutiones; Superiores autem minores locales ne constituantur ad tempus ultra triennium; quo exacto, possunt ad idem munus iterum assumi, sed non tertio immediate in eadem religiosa domo.

(i) The rule of canon 505 applies equally to "domus formata" and "domus non formata". None of the commentators consulted advert to the point, though the difference between the two kinds of houses is relevant to some other regulations. Accordingly, on the principle *übi lex non distinguity* etc., we think that the superior of a "domus non formata" is subject to the triennial law of retirement in canon 505.

If, however, a small religious house is a "domus filialis", in the strict meaning of the word, the person in charge is not a local superior in the canonical sense, as was determined by *S.C. Relig.,* 1 February, 1924: "Cum in aliquibus Ordinibus aut Congregationibus Religiosis exstent Domus *stricte filiales,* quae videlicet non constituunt propriam communitatem ncc bona propria possident, sed sunt quasi membra Domus maioris, a quo omnimode dependent et reguntur a Superiore delegato *ad nutum* Superioris, qui totam gubernat Communitatem et residet in Domo maiore, propositum fuit dubium: 'An Superiores Domorum *stricte filialium* dc quibus agitur, qui sunt simplices delegati *ad nutum* Superioris Domus matricis, veniant sub nomine Superioris localis ad sensum Codicis iuris canonici.' Rr.r/>. Negative; et ad mentem. Mens autem est ut in revisione Constitutionum singulorum Ordinum aut Congregationum ad Codicem conformatarum, apposite provideatur per applicationem eorum canonum qui circa relationes inter subditos et praepositos pressius versantur prout in singulis casibus opportunum iudicabitur." Writing in *Periodica,* 1928, XVII, p. 90, Vermccrsch made it known that the Sacred Congregation requires, amongst other things in a "domus filialis", that the religious residing there habitually should not be more than three, and that the religious in charge may be confirmed in her position by the general council of the institute for a third triennial period, i.e. for a stretch of nine years, but not beyond that without recourse to the Holy See. Examples of "domus filialis" would be a country residence for the sick or a house accommodating two or three religious whilst teaching in a local school, and one must refer to the approved constitutions of each institute in order to discover exactly the law affecting these houses.

(ii) The second question prescinds from the distinction between "formata" and "non formata". The wording of canon 505 is capable of reconstruction so as to run "non possunt tertio immediate, etc.", in which case "non possunt" would appear to imply that the appointment of a superior beyond six years without an Apostolic dispensation is invalid and, consequently, that his acts as superior are invalid. This view has been held by some. But from canon 11, and from general principles of interpretation of laws, we think that the correct solution of the doubt is that the appointment of a superior contrary to the terms of canon 505, though gravely unlawful, is not invalid. Wernz-Vidal, *Ins Canonicum,* II, n. 102: "Quae praescriptio can. 505, nec ex formula legis, ncc ex contextu vim habet irritandi ipso iure actum contrarium". Vccrmecrsch-Crcusen, *Epitome,* I (1937), n. 625 : "Verba *non possunt* secundum sc ambiguae sunt significationis,

cum aeque impedimentum dirimens et simplex vetitum exprimere queant.... Deficiente tamen explicita mentione invaliditatis, potius vi can. τι, dixeris novam confirmationem Superioris localis ultra sex annos mere prohiberi."

## 552.— Dimissorial Letters

*The superiors of certain non-exempt religious institutes are accustomed to give the dimissorial letters for the ordination of their subjects to major orders, whereas canon* 964 *denies them this right. What is the explanation?*

Canon 964.1: Religiosi exempti a nullo Episcopo ordinari licite possunt sine litteris dimissoriis proprii Superioris maioris;

4. Ordinatio ceterorum omnium alumnorum cuiusvis religionis regitur iure saccularium, revocato quolibet induito Superioribus concesso dandi professis a votis temporariis litteras dimissorias ad ordines maiores.

Canon 956: Episcopus proprius, quod attinet ad ordinationem saecularium, est tantum episcopus dioecesis in qua promovendus habet domicilium una cum origine aut simplex domicilium sine origine; sed in hoc altero casu promovendus debet animum in dioecesi perpetuo manendi iureiurando firmare, nisi agatur ... de promovendo religioso professo, de quo in can. 964.4.

The explanation is that the superiors of non-exempt religious institutes often obtain an induit from the Holy See, authorizing them to give the dimissorials. Cappello states, *De Sacra Ordinatione,* §544.5, that many non-exempt religious institutes which arc *itaris pontificii* obtain this induit from the Holy See, and the faculty is usually expressed in the sense that the dimissorials may be addressed "ad quemeunque Episcopum catholicum eiusdem ritus". Those who do not possess the induit must seek ordination from the "episcopus proprius" or with his dimissorials, as in canons 955, 956 and 958.

## 553.— Religious and their Correspondence

*The rule exists in most religions institutes by which a superior is entitled to read all letters received and sent by the subjects of that superior. How can this practice bejustified on principles of natural ethics?*

Canon 611 : Omnes religiosi sive viri sive mulieres, libere possunt mittere litteras, nulli obnoxias inspectioni, ad Sanctam Sedem eiusque in natione Legatum, ad Cardinalem Protectorem, ad proprios Superiores maiores, ad Superiorem domus forte absentem, ad Ordinarium loci cui subiecti sint et, si agatur de monialibus quae sub regularium jurisdictione sunt, etiam ad Superiores maiores Ordinis; et ab istis omnibus praedicti religiosi, viri aut mulieres, litteras item nemini inspiciendas recipere.

The practice is justified on principles of natural ethics, from the fact that a religious freely surrenders the right to the exclusive enjoyment of private correspondence, exactly as other natural rights arc surrendered at religious profession. It will be found that this point is clearly expressed in

the constitutions, which religious study well before being admitted to profession, and if any individual has an insuperable reluctance in the matter, the remedy is to seek admittance to some institute, if there is any such, which puts no restriction on correspondence. It is clear from canon 6n that the common law supposes that the rule exists in religious institutes; any constitutions opposed to the terms of this canon are abrogated.

The difficulty some feel in this matter is not relating to letters sent by religious, who have knowingly accepted the rule, but relating to those sent to religious by persons who, perhaps, are unaware of the rule, and who send information, for example about family affairs, intended only for the recipient. It must be admitted, however, that correspondence requires two persons, and if one of them has freely surrendered the exclusive right of perusal, the other suffers no real grievance. Moreover, it is absolutely certain that if a superior gets to know, from using this right of opening letters, matter which is to the detriment of some third person, there is a grave obligation in natural justice to keep secret the information. On this obligation, as affecting matters of conscience between the religious and a correspondent, besides the usual commentators on canon 6ir, *Periodica,* 1909, V, pp. 53-55 may be consulted, which concludes with an opportune warning: "Denique hodie etiam caveat Superior ne litteras imprudenter legendo vel destruendo in civilem incurrat reprehensionem, quae in foro civili multari facile queat."

I

*Where a religions order of women obliges individual members to leave letters open before despatch and the superiors to read both outgoing and incoming correspondence:*

*May the superior divulge the contents of her subjects' letters? If so, in what circumstances? If not, is it a moral offence to do so?*

*If an incoming letter is read and the superior decides that the sister should not read or possess it, to whom does the letter belong in conscience? Must she, the superior, destroy it, or should it be sent back to the writer?*

*If the sister writes a letter which the superior decides not to send, must the superior return the letter to the sister or may she destroy it without consulting the sister?*

The authors writing *De "Religiosis,* even the most extensive commentaries, and the constitutions of certain institutes that we have examined, are reticent about this matter, the reason being that institutes vary in the formulation of the rule about correspondence and in its customary interpretation. All the writers insist on the necessity of great prudence in applying the rule. Assuming that the common law of canon 611 is not being violated, we think the reply to these three queries should be as follows:

The superior may not divulge the contents of letters perused, except in the circumstances which the theologians discuss regarding the lawfulness of disclosing secrets. To do so without a proportionately grave reason is a moral offence, which might be a mortal sin if the matter is grave.[1] The matter may be of its character a *natural* secret, for example, a religious being informed by her family of something gravely affecting its honour; otherwise, the obligation is to be classed as a *professional* secret according to some,[2] or as a *committed* secret according to others.[3]

[1] Bastien, *Directoire Canonique . . . Congregations à Voeux Simples,* §241.
[*] Ctcuscn, *Religieux et Religieuses,* §242.
[•] Schaefer, *De Religiosis,* §365.2.

An incoming letter which a superior, we suppose for proper reasons, will not allow the addressee to have, should be returned to the sender, in our opinion, explaining that the right to receive letters has been surrendered by the religious to the discretion of a superior, who in this instance has used the veto. This method might sometimes cause unpleasantness with the sender, but destroying it would usually give even greater offence, besides being against the civil law in most countries.

The out-going letter should be returned to the writer, or she should at least be informed if it has been destroyed; otherwise she will be deceived and led to believe that it has been forwarded. But if some constitutions, perhaps, enact to the contrary, the rule would not violate natural justice in our opinion, since the religious is presumed to know the constitutions before profession.

### 554.—Political Directions of Superior

*Has the superior of a religions institute any power, through the vow of obedience, to force a subject to vote for a certain candidate at a general election, for instance the conservative rather than the liberale*

Canon 595: Omnes et singuli religiosi, Superiores aeque ac subditi, debent, non solum quae nuncuparunt vota fideliter integreque servare, sed etiam secundum regulas et constitutiones propriae religionis vitam componere atque ita ad perfectionem sui status contendere.

(i) Properly constituted ecclesiastical authority certainly possesses the right, not merely to advise the faithful on a political issue which affects religion and morals, but to direct them in virtue of obedience. "Quidquid igitur est in rebus humanis aliquo modo sacrum, quidquid ad salutem animarum cultumvc Dei pertinet, si tale illud sit natura sua, sive rursus tale intelligatur propter causam ad quam refertur, id est omne in potestate arbitrioque Ecclesiae: cetera vero quae civile et politicum genus complectitur, rectum est civili auctoritate esse subiecta."[1]

This power, which is conveniently termed "indirect", is enjoyed by the episcopate, and examples of its use may be seen in the pronouncements of the Spanish hierarchy during the civil war, and in the directions of the Belgian bishops on the Rex movement.[2][3]

It is enjoyed, in our opinion, on a similar principle, by religious superiors in relation to their subjects, provided, of course, that the direction is not in conflict with that of the local episcopate.

(ii) In political matters, which can in no sense be brought within this "indirect" power of ecclesiastical authority as being related to some moral or religious issue, the Church leaves the faithful free to use their civil liberties and to vote according to their political sympathies. It must follow that, although members of religious institutes voluntarily surrender many of their civil liberties, it is uncertain whether the superiors may, in principle, command their obedience in a political issue which is in no sense

1 Leo XIII, *Immortale Dei. Cf.* a study of the papal teaching on this subject in *Periodiea·* 1937, XXVI, p. 129.

3 Cf. *Collât. Bremen.,* 19J7, p. 376; *Collât. Tomacen.,* 1937, p. 217.

touching upon religion or morals. A solution must be sought in the rules and constitutions of the institute, for it is not in dispute that the right of a superior to command obedience by virtue of the vow is limited to the terms of the constitutions: "Superiores praecipiunt *itixta regulam,* vel constitutiones, non supra, extra vel contra eas."[1]

In our view, the subject of a religious institute who finds that his political views arc in conflict with those of his superiors, in an issue which cannot be brought within the "indirect" power of ecclesiastical authority, must obey the command of his superiors if it is exercised in accordance with the rules of the institute, but not otherwise. In doubt, the command of the superior should prevail.

## 555.— Papal Enclosure

*Is the ecclesiastical superior, the Ordinary's delegate, forbidden to enter the enclosure of religious with solemn vows?*

Canon 600: Intra monialium clausuram nemo . . . admittatur . . . exceptis personis quae sequuntur:

i. Ordinario loci aut Superiori regulari, monasterium monialium visitantibus, vel aliis visitatoribus ab ipsis delegatis licet clausuram ingredi dumtaxat inspectionis causa, cautoque ut unus saltem clericus vel religiosus vir maturae aetatis eos comitetur. . . .

*S.C. Relig.,* 6 February, 1924; *A.A.S.,* XVI, p. 96. III, 2 (£). Pro sola igitur visitatione *locali* peragenda visitatori clausuram ingredi licet. Visitatio *personalis* extra clausuram ad crates fieri debet. Nec Ordinario aut superiori regulari aut visitatori extra actum visitationis ratione officii clausuram ingredi fas est.

(‹·) Causa explorationis, quae ante vestitionem et utramque professionem ab Ordinario loci vel eius delegato fieri debet, nec non pro electione antistitae, Ordinarius loci aut eius delegatus clausuram ingredi non debet (can. 506, §2; 552, §2).

There are some communities of religious women who, by their rules and constitutions, make profession of solemn vows, but by papal induit are permitted to make simple vows only.[2] These nuns, though *moniales* in other respects, arc not subject to the very strict rules of papal enclosure contained in canons 597 and following[3]; the simpler enclosure of religious congregations, as in canon 604, applies to them, and their superior may admit any persons for a just and reasonable cause. In the last few years certain communities have returned to the condition of making solemn profession. It is for the ecclesiastical superior to discover in each case what the status of the nuns really is: if they have made profession of solemn vows, the rules of papal enclosure automatically follow unless relaxed by a papal induit.

It is quite clear from *S.C. Relig.,* 6 February, 1924, that the ecclesiastical superior, namely the Ordinary's delegate, may not enter the enclosure on

[1] Goycncche, *De Religiosis,* §73.
[1] For the origin of this situation cf. *Tire Clergy Review,* 1931, I, p. 658.
[3] *Code Commission,* 1 March, 1921.

the business of his delegation except for the purpose of a local inspection, and even then he must be accompanied by a cleric or religious of mature age. Local inspection covers such matters as oratories, if there are any within the enclosure, or seeing that the buildings are kept in proper condition.

The ecclesiastical superior is subject to the censure *l.s.* of canon 2542, 1, like any other person entering the enclosure without permission.1

## 556.—Confessions of Religious

*Does the meaning of "adeat" in canon 522 include the case where the religions does notfirst ask a priest to hear her confession, but the priest himself asks if she wishes to confess 1*

Canon 522: Si, non obstante praescripto can. 520, 521, aliqua religiosa, ad suae conscientiae tranquillitatem, confessarium adeat ab Ordinario loci pro mulieribus approbatum, confessio in qualibet ecclesia vel oratorio etiam semi-publico peracta, valida et licita est. . . .

*Rituale Romanum*, IV, iv, 16: His dictis accedit ad infirmum, ut cognoscat, num sit bene dispositus ... et utrum velit aliqua peccata confiteri.

*Code Commission,* 28 December, 1927, ad II: An verbum *adeat* canonis 522 sit ita intelligcndum ut confessarius advocari nequeat per ipsam religiosam ad loca confessionibus mulierum vel religiosarum legitime destinata. *Resp.* Negative.

This canon and the following one have occasioned many doubts, and, since it is a privilege granted to religious women, the official decisions of the Holy See have given a wide interpretation to the law, with the exception of *Code Commission,* 28 December, 1927, ad I. which decided that the clause relating to the place where the confession is heard must be observed for the validity of the act.2

The interesting point raised in the above question has not been officially settled, and few of the commentators refer to it expressly. The writer most quoted in this connection is Sobradillo, *De Religiosarum Confessariis,* who states on p. 217: "... utrum confessarius pro mulieribus approbatus posset sc offerre religiosis et eas invitare ut apud ipsum confiteatur. Plures auctores existimabant confessarium, qui ita ageret, invalide confessiones audire. . . . Nostra quidem sententia non recte ageret confessarius qui aliquam religiosam induceret ut apud se confiteretur; verbum enim *adeat* significat liberum accessum; attamen non est reprehendendus confessarius, qui v.g. colloquendo cum aliqua religiosa, animadvertens eam ad tranquillitatem conscientiae indigere ut favore can. 522 utatur, ei hoc dicat, licet forsitan religiosa postea eum roget ut suam confessionem audiat." Amongst the writers who think it invalid Sobradillo quotes Cappello, *De Poenitentia* (1926), n. 445. It is worth noting that Cappello, in the 1958 edition of his work, omitted this passage, as well as an opinion which conflicts with the *Code*

1 Schaefer, *De Religiosis,* §35 5, and the commentators generally.

« Cf. Q. 204.

*Commission* reply, 28 December, 1927, ad II, quoted above. This reply does not actually touch the point we are discussing, and the commentators who think the act to be invalid may continue in this view.

Our opinion is that a priest administering Holy Communion not only may, but must, ask the question, as directed by the Roman Ritual: if his jurisdiction is not contained in canon 523 it certainly will be in canon 522. Outside these circumstances wc think, with Sobradillo, that the act is always valid, since, whatever the preliminary steps, the religious by going to confession in a lawful place comes within the term *adeat.*

## 557.— Ordinary Confessor

*May the convent chaplain be appointed as ordinary confessor? May the confessor who has completed the legal period of bis office be appointed again after a certain*

Canon 524, §1: In munus confcssarii religiosarum et ordinarii et extraordinarii deputentur sacerdotes . . . nullam potestatem in easdem religiosas in foro externo habentes.

§2. Confessarius ordinarius non potest renuntiari extraordinarius nec, praeter casus in can. 526 recensitos, rursus deputari ordinarius in eadem communitate, nisi post annum ab expleto munere; extraordinarius vero immediate ut ordinarius renuntiari potest.

§5. Confessarii religiosarum tum ordinarii tum extraordinarii interno vel externo communitatis regimini nullo modo se immisceant.

(i) The chaplain, or even the local parish priest, may be appointed as the ordinary confessor, since they do not necessarily hold, by reason of their office, any external jurisdiction over the religious. It may, however, easily happen that the local priest, whether as chaplain or as parish priest, enjoys some jurisdiction, in addition to his office, in which case neither may be appointed as confessor. For example, the priest may be appointed by the Ordinary as examiner according to the law of canon 552, §2, which office excludes him, in our opinion, from acting as confessor;[1] or he may have some control of the religious as a school manager, which similarly excludes him from being their confessor. For these reasons it is not usual for the chaplain or parish priest to act as confessor to the religious he is serving, but there is no law forbidding it *servatis servandis.*

(ii) Canon 526 permits, for proper reasons, the appointment of the ordinary confessor, which normally lasts for three years, to be extended for two further triennial periods, and faculties are often given by the Holy See for still further extensions. When, finally, the time limit permitted by the common law or by induit has been reached, it is necessary for a year to intervene before the confessor may again lawfully be appointed to the same community as the ordinary, according to the terms of canon 524, §2. But it is perfectly clear that, in the circumstances of re-appointment set out in canon 526, the year's interval is not required.[2]

[1] Sobradillo, *De Rtligioiarufn Confejsariij,* p. 182.

## 558.—Maternity Nursing

IP7u/ *is the attitude of the Holy See at the moment regarding professed religious being engaged in maternity nursing? It is understood that, at one time, this was not encouraged.*

The specific rules issued by the *Congregation of Religious,* 6 March, 1921, regulating the future approval of religious institutes, contained under n. 17 the following: "Multo minus approbantur Congregationes, quae sibi assumendum proponerent curam immediatam puerulorum in cunis vagientium, vel mulierum parturientium in Domibus, vulgo dictis Maternitatis, vel alia huiusmodi caritatis opera, quae virgines Deo dicatas et habitu religioso indutas, dedecere videantur."

*Propaganda,* fifteen years later, ii February, 1936, adopted a different view about this matter, and subject to the rules then promulgated religious are no longer discouraged from undertaking this important work of charity. Λ commentary on this document may be seen in *Periodica,* 1936, p. 47. Actually it needs no explanation, and the convenience of our readers will best be served by printing here the English rendering provided by Mgr J. Moss for *The Clergy Review,* 1936, XI, p. 331.

"It has been the constant and sedulous practice of this Congregation to harmonize the character of the apostolate with the varying necessities of times and places. At the present time many Ordinaries of missions have of their own accord forwarded documents to the Holy See concerning the necessity of providing more suitable assistance for the welfare of mothers and infants. In certain districts of Africa some tribes are daily decreasing and will be brought to extinction unless they are helped by more efficacious care of the lives of mothers and infants. In other places, through neglect of the elementary principles of health, children arc dying in large numbers even in the first days of life. The civil authorities and the non-Catholic sects in these parts arc turning their minds and attention earnestly to this matter, and some governments arc not admitting sisters (nuns) into hospitals unless they are fully qualified nurses.

Already through private counsel there have arisen here and there sodalities for the saving of mothers and children, and it is necessary, as soon as possible, to co-ordinate these and give them a definite discipline.

The Congregation, therefore, giving this very urgent necessity of the missions that consideration it deserves, after having obtained the necessary powers from the Holy Father, by Divine Providence, Pope Pius XI, and after consultation with the *Congregation of Religious,* has considered it opportune to issue the following regulations and instructions:

It is greatly to be desired that new sodalities of sisters should be founded who will devote themselves, with the necessary precautions, to the care of mothers and infants who are in danger. These much desired institutes should be formed according to the norm of common law. Moreover, it will be pleasing and acceptable to the Sacred Congregation if, in the religious institutes already existing, groups of sisters are formed who will give themselves up to the aforesaid work. If the matter demands it, opportune regulations will be added to the constitutions of the institutes dependent upon this Sacred Council.

What has been laid down above, however, is subject to the following conditions:

*(a)* It is not necessary that *all* religious women should take up every kind of nursing. They can have subject to them native lay-women, nurses duly qualified, and joined to the institute in a common life and spirit.

*(Ji)* No sister can be obliged by her superiors to take up the work of midwife, but only those sisters who by free choice desire to take up this special work of missionary charity.

(r) These new duties require an adequate knowledge of medicine and a special training of soul. It is necessary, therefore, that sisters should obtain public diplomas either in medicine or nursing; but especially they must be strengthened and safeguarded by special helps, which spiritual helps are to be determined by the superiors. In giving these special medical aids they must realize that they imply the holy exercise and merit of charity since, while relieving bodily pain, they open the way into the soul for the grace of Redemption. It is well to recall the phrase of St Francis de Sales that charity is a vigilant guardian of chastity.

(</) It is necessary that sisters in order to obtain their diplomas should attend Catholic nursing homes and universities, and, if these are wanting, then hospitals under Catholic management. If, however, they cannot attend Catholic nursing homes and universities, the sisters, having obtained permission of this Sacred Congregation, can frequent lay nursing homes. The candidates should frequent these hospitals in twos at least, and as far as may be necessary, in modest lay-dress; they should live in religious houses where they may have daily at hand spiritual helps and safeguards.

**O** In new institutes, however, which will give themselves up, *ex professo,* to this care of mothers and infants, the candidates should complete these studies before they take their perpetual vows. In institutes already existing this regulation is to be borne in mind and, as far as the constitutions allow, is to be observed.

With regard to practising as a doctor or surgeon for missionaries, this is regulated by the prescriptions of canon 139, C.I.C., and the induits which this Congregation is accustomed to grant.

Given at Rome from the Congregation of Propaganda, the **nth** day of February, 1936."

## 559.—Calendar for Religious

*In the parish church served by a non-exempt religions institute, the fathers follow the universal Ordo for the office. Are they obliged to follow the diocesan Ordo for the Mass or may they use the universal Ordo for both Mass and office?*

The universal calendar, which appears annually, determines the dates on which the feasts of the Easter cycle and other variable days occur. In addition to the feasts therein, each particular church requires a slightly modified calendar providing for the observance of such feasts as that of the titular or of the dedication of the church.

But the liturgical law supposes that, in addition to this slight modification, there exists everywhere a calendar which is either "proprium dioeccseos" or "proprium ordinis". Privileges used to be conceded to certain dioceses

and religious institutes permitting them to follow the calendar proper to the secular clergy of Rome, c.g. *Decreta Authentica,* nn. 5694 ad I and 4236. These privileges were abolished, 28 October, 1913, n. 4308, ad IV, e: "Privilegia quibus nonnullae Dioeceses vel Instituta gaudent, sese scilicet conformandi Kalendario Cleri Romani, aut alicuius Ordinis seu Congregationis et alia huiusmodi, penitus abolentur." It may well be that, in spite of this general abolition, certain institutes enjoy some particular privilege or induit which permits them to depart from the common law on the subject; in which case they follow the directions contained in their induits.

If they enjoy no particular privilege, the rule to be followed is clearly stated in n. 4312, 28 February, 1914:

I. Ordines Regulares proprium omnino habere debent Kalendarium, quod pariter adhibendum est a Monialibus ct Sororibus eorundem Ordinum.

II. Congregationes seu Instituta utriusque sexus a S.Scde approbata et sub regimine unius praesidis generalis constituta, si ad recitationem divini Officii teneantur, proprium pariter habeant Kalendarium.

III. Congregationes et Instituta, quae sive Ordinaria sive Apostolica auctoritate sint approbata, non tamen comprehendantur paragrapho praecedenti, uti debent Kalendario dioecesano prouti iacct, additis iuxta Rubricas Officiis quae ipsis peculiariter concessa sunt.

It would appear that the religious referred to by our correspondent come under n. III of this decree, and should follow the diocesan calendar for both Mass and office.

## **560.**—Mass in Dominican Chapel

*May a secular priest, celebrating Mass in a chapel belonging to Dominican sisters, follow the diocesan Ordo, instead of that proper to Dominicans? Otherwise be may bave to use two missals.*

*Addit. et Variat.,* IV, 6: Omnes et singuli Sacerdotes, tam saeculares quam regulares, Missas, etsi Regularium proprias, omnino celebrent iuxta Kalendarium Ecclesiae, vel Oratorii publici, in quo celebrant; exclusis tamen peculiaribus ritibus Ordinum et Ecclesiarum propriis. Idem servetur in Oratorio semipublico. . . .

5.R.C., 4 June, 1934 (private): (1) Ilabentne Sorores III Ordinis S. Dominici in communi viventes privilegium utendi Kalendario proprio Ordinis S. Dominici? *Resp.* Affirmative.

(3) Si sacerdotes earum Kalendarium sequi teneantur, quodnam Missale adhibendum est, si Missa propria, quae in MissaLi Romano non est, sed in Missali Ordinis S. Dominici tantum invenitur, dicenda est? Et quodnam Missale iterum adhibendum est, si Missa invenitur in utroque Missali, nempe in Romano et in Proprio Ordinis, ct aliqua commemoratio facienda est, quae eodem die in Missali Ordinis tantum invenitur? Sufficitne ut talis commemoratio ex communi Missalis Romani fiat? *Resp.* Sive quoad Missas sive quoad commemorationes in Missis faciendas Sacerdotes utantur Missali proprio Ordinis Praedicatorum, exclusis tamen peculiaribus ritibus eiusdem Ordinis propriis, iuxta novas Missalis Romani Rubricas, tit. iv, n. 6.

The conclusions apply not only to the chapels of Dominican sisters but

to all churches and chapels which enjoy the privilege of a calendar distinct from that of the diocese in which the chapel is situated. The private reply, J.R.C., 4 June, 1934, was communicated to us by Right Rev. Mgr Arnoz, Prefect Apostolic of Bulawayo.

On the principle that Mass must be celebrated according to the calendar of the church, a visiting secular priest must obey this rule, and there will be no difficulty whatever if the community, though having a proper calendar, uses the Roman missal for the *Ordo Missae.*

If, in addition to a proper calendar, the community also enjoys the use of a rite differing in some particulars from that of the *Ordo Missae* in the Roman missal, the problem is how to avoid the necessity of using two missals, one for the *Ordo Missae* and the other for the Mass proper to the community; for there is a very stringent law, expressed in canon 819, requiring priests to celebrate Mass according to their own rite, and no secular priest may, for any reason, say Mass with rites proper to the Dominicans.

One solution is that a separate missal for the *Ordo Missae* is not really necessary, since the differences are slight, and the secular priest will know by heart the *Ordo Missae* which he is bound to follow. Another very good suggestion, made by Fr Lattey, S.J., is that the Roman *Ordo Missae* should be bound into a Dominican missal, for the convenience of priests who have to use it. If neither of these solutions is accepted, it will be necessary for reading the Canon of the Mass, to change the Dominican for a Roman missal.

## 561.—Communication of Privileges

*Is the principle of communication of privileges still in force, so that a privilege obtained by one religions institute is, under certain conditions, enjoyed by them all?*

Canon 613, §1: Quaelibet religio iis tantum privilegiis gaudet, quae vel hoc Codice continentur, vel a Sede Apostolica directe eidem concessa fuerint, exclusa in posterum qualibet communicatione.

*Code Commission,* 30 December, 1937. An verba canonis 613, §1: *exclusa in posterum qualibet communicatione,* ita intclligcnda sint ut revocata fuerint privilegia a religionibus ante Codicem I. C. per communicationem legitime acquisita et pacifice possessa. *Resp.* Negative.

The opinion of canonists concerning the communication of privileges amongst religious institutes is fully studied by Dr Tatjer in *Apollinaris,* 1952, pp. 458 *seq.* He quotes nineteen writers who favoured the view that the Code has suppressed communicated privileges obtained before its promulgation; forty held that the latter part of canon 613, §1, referred exclusively to the communication of privileges in the future, and this is the interpretation which the *Code Commission* adopts as the correct one. It is, in fact, rather difficult to see how any other interpretation could rightly be advanced since, from canon 10: "leges respiciunt futura non praeterita, nisi nominatim in eis de praeteritis caveatur"; also, from canon 4: "privilegia atque indulta, quae ab Apostolica Sede ad haec usque tempora personis sive physicis sive moralibus concessa, in usu adhuc sunt nec revocata, integra manent, nisi huius Codicis canonibus expresse revocentur".

## 562.—Religious with Leave of Absence

*Do the disabilities of canon 642 affect a religions who is not permanently severed from his institute, though livingfor valid reasons ontside his religious house?*

Canon 606, §2: Superioribus fas non est, salvis praescriptis in can. 621-24, permittere ut subditi extra domum propriae religionis degant, nisi gravi et iusta de causa . . . pro absentia vero quae sex menses excedat, nisi causa studiorum intercedat, semper Apostolicac Sedis venia requiritur.

Canon 638: Indultum manendi extra claustra, sive temporarium, id est indultum *cxclans/raiionis,* sive perpetuum, id est indultum *saecnlari^ationis,* sola Sedes Apostolica in religionibus iuris pontificii dare potest. . . .

Canon 642, §1: Quilibet professus ad saeculum regressus, licet valeat, ad normam can. 641, sacros ordines exercere, prohibetur tamen sine novo et speciali induito: 1. quolibet beneficio. . . .

*S.C. Relig.,* 15 June, 1909; *Fontes,* n. 4395 :... SS. D.N. Pius Papa decimus decernere dignatus est, ut omnibus deinceps rescriptis, quibus saccularizatio perpetua vel ad tempus, aut votorum perpetuorum relaxatio, prout supra, sacerdotibus et clericis in sacris ordinibus constitutis conceditur, adnexae intendantur, licet non expressae, sequentes clausulae, quarum dispensatio Sanctae Sedi reservatur: Vetitis absque novo et speciali Sanctae Sedis induito: 1. Quolibet officio. . . .

A religious dwelling outside a religious house may have: (1) simple leave of absence even for a long period, as in canon 606, §2, in which case his status is not changed in the slightest, since he remains subject to his religious superior like any other religious; (2) or he may have an induit of exclaustration, as in the first part of canon 658, in which case he remains a religious, it is true, since he is bound by his vows and must return to his institute when the time limit of the induit has expired, but he is subject for the time being not to his religious superior but to the Ordinary, as in canon 659; (3) or he may be eventually secularized, when he ceases to be a religious and becomes a secular cleric.

A religious with leave of absence suffers no disabilities whatever; subject to his superior's consent he may accept any office not incompatible with the religious state. It is equally clear that a religious who has been secularized suffers the disabilities of canon 642, §1.

But it is not certain whether a religious who has an induit of cxclaustration suffers these disabilities. The view that he does is supported by *Fontes,* n. 4393, which distinguishes between perpetual and temporary secularization, applying the same disabilities to both. The temporary relaxation of vows, it is thought, now corresponds to what the Code calls exclaustration, and comes within the term "ad saeculum regressus" of canon 642, §1; for, indeed, the reason for these legal disabilities applies equally, if not more so, to a religious with an induit of exclaustration.[1]

The view that he docs not suffer the disabilities whilst merely cxclaustrated is held by most of the commentators we have consulted,[2] since from

[1] Chclodi, *De Personis,* §287; Goycncchc, *De Religiosis,* §101, n. 3}.

[2] Schaefer, *De Religiosis* (1940), §356; Bcstc, *Introductio,* p. 435 i Wcxnz-N idal, *De Religiosis,* §425.

canon 19 laws of this character must be strictly interpreted, and so long as the religious is merely exclaustrated he cannot be included under the term "ad saeculum regressus".

The numbers are certainly on the side of those who take the more liberal view, but the intrinsic arguments seem about equal. There should be little practical difficulty, however, since the offices barred in canon 642 may only be obtained through the local Ordinary or other ecclesiastical superior, who may please himself in choosing either of these views until the point is expressly decided by the Holy See.

### 563.—Ex-Missionary Priest's Employment

*A priest member of a missionary society, released owing to ill-health from his foreign mission, becomes incardinated in a diocese. He now learns that his former membership in the society bars him from certain offices, including that of ordinary confessor to nuns. Why is the law so unfriendly to one who, it wouldseem, is worthy of every consideration?*

Canon 642, §1: Quilibet professus, ad saeculum regressus, licet valeat, ad normam can. 641, sacros ordines exercere, prohibetur tamen sine novo et speciali Sanctae Sedis induito: .... 3. Quocunque officio vel munere in Curiis episcopalibus et in religiosis domibus sive virorum sive mulierum, etiamsi agatur de Congregationibus dioecesanis.

§2. Haec valent quoque de iis qui vota temporaria, vel iuramentum perseverantiae, vel peculiares quasdam promissiones ad normam suarum constitutionum ediderunt et ab eisdem dispensati fuerunt, si per sex integros annos eisdem ligati fuerint.

*S.C. Relig.,* 15 June, 1909; *Fontes,* n. 4393: Quum minoris esse soleat aedificationis, salvis extraordinariis nonnullis casibus, quod in officiis dioecesanis eminere conspiciantur, qui, vel in aliquo Ordine regulari vota solemnia professi, indultum saccularizationis sive perpetuae sive ad tempus obtinuerint, vel in Instituto aliquo religioso, emissis votis perpetuis, ab istis dispensati fuerint; ne alii inde Religiosi induci possint, ut varios egrediendi clausura praetextus exquirant, quod nimis frequens accidere experientia docet, SS. D.N. Pius Papa decimus decernere dignatus est . . .

The reason for the law of canon 642 is amply expressed in *Fontes,* n. 4393. Like any law made for the common good, it may be harshly incident in a given instance, but provision is made for any induits which may be necessary.

The commentators arc agreed that office in a religious house includes that of an ordinary confessor: Chelodi, *De Personis,* §287, n. 4; Beste, *Introductio,* p. 435; Berutti, *De Religiosis,* §154, IV.

The canon in §2 extends the prohibition to a member of societies without vows provided, firstly, that membership requires some bond such as an oath or an oblation from which the person has been dispensed; and provided, secondly, that he has been so bound for a period of six years in the society, it may be found, on examination, that these conditions are not verified, on one point or another, in certain eases; the law does not apply, for example, to a member of a society who has left, without the need of any dispensation, owing to the period for which he joined having been completed. If the law

does apply, the remedy in hard cases is to seek an induit from the Holy See through the Ordinary of the diocese.

### 564.— "Episcopus Benevolens"

*A secularised religions, without being expressly incardinated into the diocese of the bishop who receives him, is accepted and given a parochial appointment which he holds for sixyears. Is he now incardinated?*

Canon 641, §2: Episcopus religiosum recipere potest sive pure et simpliciter, sive pro experimento ad triennium: in priore casu religiosus eo ipso est dioecesi incardinatus; in altero, Episcopus potest probationis tempus prorogare, non ultra tamen aliud triennium; quo etiam transacto, religiosus, nisi antea dimissus fuerit, ipso facto dioecesi incardinatus manet.

*Code Commission,* 27 July, 1942, II. Utrum verba canonis 641, §2: *Episcopus potest probationis tempus prorogare,* intelligenda sint tantum de prorogatione expressa, an etiam de prorogatione tacita. *Resp.* Negative ad primam partem, affirmative ad secundam.

Canon 641, §2, determines that a religious who, though not incardinated in the diocese of a benevolent bishop, has nevertheless been received therein for three years experimentally, becomes *ipso facto* incardinated at the end of a further period of three years, unless he is dismissed before the completion of that period. There is no doubt on the meaning of this law when the bishop expressly extends his reception of the religious for the required period. But, from the *Code Commission* reply, even tacit prorogation suilices, as many commentators held, e.g. Goyeneche, *De Religiosis, §100:* "Si autem Episcopus primo triennio expleto, nec dimittat nec proroget expresse, prorogatio ad aliud triennium *tacite* facta putari potest. . . ." Larraona in *Commentarium pro Religiosis,* 1931, p. 56, explains the meaning of *tacit* in this connexion.

### 565.— Religious Societies without Vows

*Supposing a priest member of a religions society witloont vows has to leave bis communityfor valid reasons, to what diocese, if any, does he belong?*

Canon in, §1: Quemlibet clericum oportet esse vel alicui dioecesi vel alicui religioni adseriptum, ita ut clerici vagi nullatenus admittantur.

Canon 252, §1: Eidem (Congregationi dc Propaganda Fide) subsunt societates ecclesiasticorum . . . praesertim quod attinet ad . . . opportunas concessiones ad sacram ordinationem alumnorum requisitas.

Canon 678: In iis quae ad . . . suscipiendos ordines pertinent, sodales iisdem legibus tenentur ac sacculares clerici, salvis peculiaribus praescriptionibus a Sancta Sede datis.

Canon 980, §2: Qui, citra apostolicum indultum, suum subditum in sacris sine titulo canonico scienter ordinaverint aut ordinari permiserint, debent ipsi eorumque successores eidem egenti alimenta necessaria praebere, donec congruae eiusdem sustentationi aliter provisum fuerit.

*Code Commission,* 2-3 June, 1918; *A.A.S.,* 1918, X, p. 347 : An societatibus clericalibus sine votis applicentur . . . can. 2410. . . . *Resp.* Affirmative . .. quod ad canon 2410 quatenus societas privilegio gaudeat dimissorias concedendi ad ordines suis subditis. . . .

It is certain from canon **in,** §1, that the priest must belong to some diocese or religious body, one of which is responsible for his support. In the case of secular clerics not members of a religious institute, and in the case of professed religious, there is no difficulty in coming to a decision. Some obscurity, however, arises in the case of members of a religious society without vows: on the one hand they arc not religious properly speaking, as canon 673, §1, declares; on the other hand they are subject generally speaking to the laws governing religious institutes as stated more than once in canons 675-81. A consequence of what might appear to many to be an unstable condition of things is seen in canon 678: the members are subject to the ordination rules governing secular clerics, unless the Holy See has arranged otherwise; and an interesting example of how the rules are applied may be seen in a decision of the *Congregation of the Council,* 15 July, 195 3,[1] which denied to a member, precisci}7 because he was not a religious, the benefit of incardination by the method explained in canon 641, §2.

There are a considerable number of religious societies without vows, and for the purpose of deciding such questions as the above they may be divided into three categories. Occasionally doubts may arise as to which category a given society belongs, but it will be found, for the most part, that the point is decided from the constitutions, from the title of ordination, and from the rules determining the proper bishop for ordination and the granting of dimissorials.

(i) Foreign missionary societies arc subject to *Propaganda,* and the mission oath taken by the members must be considered, and is often so defined in the statutes, as transferring a member from his diocese of origin; his aggregation to the society, if not to be called incardination technically, is its equivalent for all legal purposes. This seems implied in canon 252, §1, and is so explained by the commentators, especially Stanghetti.[2] The decision, 15 July, 1933, concerned in fact a member of the Lyons Society for African Missions: a religious, but not a cleric incardinated in a diocese, may become excardinated by the method of canon 641, §2; a member of a missionary society desiring incardination in a diocese must secure it like any secular cleric desiring to change his diocese, by the procedure of canon 112. Until this happens the missionary society or *Propaganda* is responsible for him.

(ii) Other clerical societies without vows may enjoy the privilege or induit of giving dimissorial letters for the ordination of their members, in which case, and for the purpose of determining subsequent responsibility, they arc subject to the laws governing religious. The induit according the power to give dimissorials usually makes it clear that, in the event of a member leaving the institute, he must find a benevolent bishop to accept him, as directed for religious in canon 641, §1. Hence, also, the reply of the *Code Commission,* 2-3 January, 1918: by deciding that a society without vows but possessing an induit for giving dimissorials must obey canons

[1] *A.A.S.,* 1933, XXVI, p. 254.
[1] *Prassi della S.C. de Propaganda lide,* pp, 34-44.

965–67, to which canon 2410 is attached, it is implied that the society is in this respect equivalent to a religious institute.1

(iii) Finally, those institutes which are neither subject to *Propaganda* nor enjoying an induit to grant dimissorials are governed, in principle, by the law relating to the ordination and maintenance of secular clerics, unless the Holy See has made some special arrangement, which will normally be in the approved constitutions. The proper bishop for ordination is defined in canon 956, and though many difficulties have arisen in its interpretation they are not relevant to the present discussion. Notwithstanding a member's aggregation to the society, he is incardinatcd to the diocese of the bishop who ordains him or gives dimissorials, as the *Code Commission* answer implies by restricting to societies with an induit for dimissorials the law requiring subjects to be sent for ordination to the bishop of the place in which the house of the society is situated.

## 566.—Local Law and Regular Houses

*Maj it be held today, at least as a probable opinion, that a secular priest who is staying within his diocese in a religious house of exempt regulars is not bound by tbe local diocesan laws, exactly in the same way that he is not bound by these laws when staying outside the diocese?*

Canon 13, §2: Legibus conditis pro peculiari territorio ii subiiciuntur pro quibus latae sunt quique ibidem domicilium vel quasi-domicilium habent et simul actu commorantur, firmo praescripto can. 14.

Canon 14, §1, 1: Non adstringuntur legibus particularibus sui territorii quandiu ab eo absunt, nisi aut carum transgressio in proprio territorio noceat, aut leges sint personales.

(i) We must exclude from this discussion all those laws made by the local Ordinary which exempt regulars are themselves bound to observe, for example, laws regulating divine worship (canon 1261, §2) or the Mass stipend (canon 851, §5). Nor are we concerned here with episcopal ordinances which are indubitably personal and which bind the subject wherever he goes. It must be observed also that certain abbeys are not within any diocesan territory: they are *abbatiae nullius* and are in effect the equivalent of a small diocese, as provided for in canon 215, §2; it is certain that whatever freedom from his own diocesan law is enjoyed by a priest outside of his diocese is enjoyed also in an *abbatia nullius.* The question to be defined is whether every house of exempt regulars is to be considered as not within the territory of the diocese for the puqoosc of determining the obligations of visiting diocesan priests.

(ii) In the Middle Ages it was very widely held that the monasteries of exempt religious were extra-territorial, but from the sixteenth century onwards the opinion became more and more accepted which regarded their exemption as personal rather than territorial. Onclin discusses the subject very fully in *De territoriali vel personali legis indole* (1938), pp. 119 *seq.* and 221 *seq.,* and he shows that, notwithstanding the pre-Codc opinion to the

1 Cf. Stanton, *Dr Societatibus . . . sine rotis,* §131; Schaefer, *De Religiosis,* §609; *Periodica* 1934, p. J7, records an opinion in the opposite sense.

contrary, it must be held, under the Code discipline, that the houses of exempt religious arc not extra-territorial, always excepting the *abbatia nullius.* This is a necessary conclusion from the many canons which uphold episcopal jurisdiction over these places exactly as in any other part of the diocese. Cf. canons 357, §1 (use of pontificals), 792 (administering Confirmation), 115 5, §1 (consecrations), 1343, §1 (preaching), 349, §2, 2; and *Code Commission,* 6 December, 1930 (indulgences). The list of modern commentators who agree with this interpretation is imposing, and includes such authorities as Van Hove, Cappello, and Vermcersch-Creusen.

Ondin, *op. cit.,* p. 359, concludes: "Quibus ex dispositionibus (Codicis) apparet domus et ecclesias regularium esse in territorio et de territorio dioecesis, exemptionem domus regularium non esse plene localem, sed tantum quantum postulat ratio personalis exemptionis religiosorum." This doctrine is so unassailable that it is adopted by regular canonists, who arc rightly inclined to interpret as widely as possible their privilege of exemption. Thus Bcste, O.S.B., *Introductio,* p. 73: "Monasteria aliave loca exempta vi exemptionis non desinunt esse in territorio dioecesis in qua situm habent ac consequenter incolae et advenae dioecesis ibi versantes, si excipias personas quae personali exemptione fruuntur, non sunt absentes a territorio."

(iii) A few post-Code writers are quoted for the opposite opinion, namely that visitors in a monastery are not bound by local diocesan law, but we know of none who substantiates this interpretation. Thus Gcnicot-Salsmans, *Theol. Moralis,* I, §114, is often cited, though he docs no more than record that St Alphonsus thought this view "probable"; this is historically correct, but no one can maintain that St Alphonsus may be followed when he is expounding a law which, in our present discipline, has been modified. Noldin is also mentioned, *Tbeol. Moralis* (1936), I, §151, though he is content to record that in this controversy the opinion prevailing after the Code is that which we have described above under (ii). Coronata, *Institutiones,* I, §15, states that laity visiting monasteries arc probably exempt from local episcopal laws. Vcrmecrsch-Creuscn, *Epitome (syyf),* I, §II2› whilst defending the view given above under (ii), concedes external probability to the opposite view, relying on the teaching of Noldin and Coronata. Personally, before agreeing that this view is probable, we should like to know the reasons upon which it is based.

# V. WORSHIP

## §1. LITURGICAL WORSHIP

### 567.—Definition of Liturgical Worship

*What is the exact weaning to be given to the word "liturgical", in its modern use, as distinct from the many excellent forms of devout assistance at Mass and Offices?*

(i) The characteristic of liturgical worship is the fact that it is offered, not by private individuals, but by the Mystical Body of Christ entire in its Head and members. Christ is the chief minister, to whom the Church is united as branches to the vine or as members of a body to its head: "Domine in unione illius divinae intentionis. . . ." The worship of the whole Church, as a moral person in Christ, His Mystical Body, has a value independently of the dispositions of the physical persons performing it, an efficacy which is best described as *ex opere operantis Ecclesiae.*

The encyclical *Mediator Dei* stresses this from the beginning: "Ecclesia igitur, accepto a Conditore suo mandato fideliter obtemperans, sacerdotale lesu Christi munus imprimis per sacram Liturgiam pergit. Idque facit primario loco ad altaria, ubi Crucis sacrificium perpetuo repraesentatur et, sola offerendi ratione diversa, renovatur; deinde vero per sacramenta, quae peculiaria instrumenta sunt, quibus superna vita ab hominibus participatur; postremo autem per laudis praeconium, quod Deo Optimo Maximo cotidie offertur. 'Quam iucundum sane—ita Decessor Noster f. m. Pius XI—caelo terraeque spectaculum praebet Ecclesia orans, cum totos continenter dies noctesquc totas, psalmi divino afflatu conscripti concinantur in terris: nulla per diem computetur hora, quae propria non consecretur liturgia; nulla humanae vitae aetas, quae suum non habeat locum in gratiarum actionibus, laudibus, precibus, piaculis communis huius obsecrationis mystici Corporis Christi, quod est Ecclesia.' "[1]

(ii) The liturgical spirit, which has been spreading with increasing strength since the middle of the last century, has developed *pari passa* with a more profound understanding of the doctrine of the Mystical Body of Christ. It aims at making the faithful in general more conscious of their share, as members of the Church, in her public worship. They are encouraged to have an attitude of mind in prayer which is social and corporate, rather than solitary and egoistic, uniquely occupied with personal petitions. They are taught to assist internally at every Mass celebrated throughout the Church, offering and being offered with the sacrifice, and to assist actually at Mass with full advertence to their share in it: "Memento . . . omnium circumstantium quorum fides Tibi cognita est et nota devotio"; this is greatly assisted if they receive Holy Communion, not privately outside Mass, but during Mass as part of the liturgy: "ut quotquot ex hac altaris participatione. . . ." They are invited to assist in providing the material requisites of public worship,

[1] *A.A.S.*, 1947, XXXIX, p. 522.

by joining altar societies and in other ways assisting in the support of church and altar. A true Catholic attitude of this kind generally exists among pious faithful people, who may have no inclination whatever to make use of the forms of worship contained in liturgical books.

Nevertheless, the raiment of the bride of Christ is a most precious thing. The spirit and balance of true Catholic worship is best preserved by using those forms of worship which have been hallowed with the use of centuries in the Church.

"Active participation in the Holy Mysteries and in the public and solemn prayer of the Church is the primary and indispensable source of a true Christian spirit."[1]

"To spread among the faithful an exact knowledge of the liturgy ... a delight in the prayers, rites and chants ... an active part in the Holy Mysteries ... would nourish their piety, strengthen their faith, and teach them to lead lives of perfection."[2]

"The faithful, not as outsiders or mute spectators, but as understanding the liturgy and penetrated by its beauty should assist at sacred functions and join in the choral responses."[3]

(iii) There is no agreement on the correct *definition* of liturgical worship. Lefèbre adopts the definition of "cultus publicus" in canon 1256, and he is right in so far that all liturgical worship is public: "cultus si deferatur nomine Ecclesiae a personis legitime ad hoc deputatis et per actus ex Ecclesiae institutione Deo, Sanctis ac Beatis tantum exhibendis dicitur *publicus',* sin minus *privatus".* But a great assembly of bishops, clergy and faithful, in the presence of a papal legate, taking part in vernacular devotions during a Eucharistic Congress, is obviously public, though not liturgical in the ordinary acceptation of the word. Callewacrt regards its regulation by ecclesiastical authority as the specific notion of liturgy.[4] Vcrmcersch rejects this because it stresses unduly the element of positive law; he prefers to add to "cultus publicus" the word "ritualis", since established rites possess a unique stability and gravity.[6]

Failing agreement, we must be satisfied with the terms of canon 1256, understood in the sense that public worship, in its most essential and stable shape, is found in the *traditional* forms, as enshrined in the Missal, Breviary, Ritual and Pontifical, rather than in those forms which have been developed or introduced with the Renaissance.

### 568.—Vernacular in the Liturgy

***At*** *weddings and other rites, is it permissible to repeat the prayers in English after reciting them in Latin? The custom ofprayers in the vernacular at thefuneral service might be adduced as an analogy.*

(i) At funerals the priest is bound to use the Latin text of the *Ordo Administrandi,* "De Excquiis", an application of the rule that in sacred

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1 Pius X, *Mota Probrio,* 22 November, 1903,
1 Benedict XV, July, 1915, Lcftbrc, *Catholic Liturgy,* p. 272.
1 Pius XI, *Dirini Cultus,* 20 December, 1928.
*4 De Sacra Liturgia,* §6.
*4 TbcoL Moralis,* 11, §171.

functions the minister must follow the approved liturgical books. Cf. canons 733» 818, and 2387. This rite, unlike the rite of baptism, contains no English prayers. The earlier edition of the *Ordo Administrandi* contained an English appendix, including "Recommendation of a departing soul". The two concluding prayers: "To Thee, O Lord, we commend . . ." and "Grant, O Lord, we beseech Thee . . .", together with the *De Profundis,* are usually recited at the end of the funeral office at the grave. They are printed in the cheap texts of the Mass for the dead and the funeral office, and the custom of reciting them was sanctioned by the English bishops, 29 April, 1908.1

A reply, *S.R.C.,* 29 April, 1931, not published in the *Acta,* was given to the Bishop of Rochester (U.S.A.), forbidding vernacular prayers between the "Deus cui proprium . . and the "In paradisum". A translation of this decree may be seen in Bouscaren, *Canon Lan> Digest,* I, p. 568. In some respects it is not very clear, but a reference is given to *Decreta Authentica,* η. 3790, forbidding a curious mixture of English and Latin in Vespers of the Dead, and it is fairly evident that what is forbidden is interspersing English prayers with Latin in the rite itself. This is not permitted except when expressly allowed, as in the baptismal rite.

Any argument drawn from the use of the vernacular at baptisms and at the close of funerals, in order to justify its use at other liturgical rites, must be used with the greatest caution. The Church has always been opposed to the use of the vernacular during liturgical functions, because, amongst other reasons, many heretical sects have started from this custom.2 If the proposal, in the above question, is to intersperse the Latin rite at weddings with English versions of the original, the answer must be that it is not permitted. The only English sentences which can lawfully be used within the rite arc those given in our *Ordo Administrandi.*

(ii) A desire to use the vernacular as much as possible is an almost necessary accompaniment of the movement in favour of popularizing the liturgy. The solutions given above concern the law as it is at the time of writing. In many quarters a strong plea is being made that the law should be amended in this respect. Notwithstanding the many reasons favouring the continued use of Latin, and the protest which the French bishops found it necessary to make against the unauthorized use of the vernacular, the French Hierarchy obtained from the Holy See, 28 November, 1947, permission for a very extensive use of the French language in administering the sacraments.3 These concessions will most likelv be extended to other places.

For the moment, we must be content with familiarizing the laity with the liturgy by the use of books giving a vernacular rendering of the Latin text. Also, there is not only no prohibition, but a positive recommendation to the clergy, in the *Council of Trent* and the *Tooman Catechism,* to explain the meaning of these rites to the people. The rubric immediately preceding the

1 Cf. Dunne, *'l be Ritual Explained,* p. 120: "The priest is bound to recite the whole of the Latin Prayers contained in the *Ordo Extquiarum,* after which any English prayers may be said. As a rule, the priest and people recite in English at least' the *De Profundir,* and not unfrcquently the priest repeats also in English other parts of the burial service which seem to him appropriate."

2 Cf. Callewaert, *Liturgieae Institutiones,* §123.

' *The Clergy* Ra/r»', 1946, XXVI, p. 301; *Documentation Catholique,* 1948, col. 129.

rite of extreme unction directs: "Deinde piis verbis illum consoletur, et de huius Sacramenti vi, atque efficacia, si tempus ferat, breviter admoneat." There is no better way, it would seem, of observing this rubric, than by reading a version of the prayers contained in the rite. The same applies to any sacrament, including Matrimony; cither before or after, the priest can explain the text, giving a translation of the prayers.

### 569.—Public Prayers during Mass

*It is perfectly clear from* .Î.R.C., *n.* 4375, *that the faithful assisting at low Mass may not recite in Latin with the celebrant those portions, such as the Secrets and the Canon, which the rubrics direct the priest to recite "secreto". Does this prohibition cover the practice, not uncommon at children's Masses, of reciting in English these same portions'?*

Canon 20: Si certa de re desit expressum praescriptum legis sive generalis sive particularis, norma sumenda est... a legibus latis in similibus.

J. *Off.,* ii December, 1850; *Fontes,* n. 913.28: Aux Messes qui ne sont pas chantées nos Chrétiens recitent tous ensemble les prières que nous avons traduites, et qu'on sait par coeur dans toutes les peuplades. *R.esp.* Praxim, de qua agitur, laudandum verbis amplissimis.

*Propaganda,* 23 September, 1773; *Collectanea,* n. 802: Circa la consuetudine per la quale i cristiani in tempo della Messa cantano in lingua cincse il *Gloria,* il *Credo* ccc. si dovrà mandare il decreto dei 1755 e la risposta data nel 1759; c si è detto che puo tollerarsi che continuino in simii pratica recitando tali orazioni, purchè non contcngano errori, *secretamente e privatamente, e non con voce alta e unitamente insieme.* Cf. also n. 805.

*S.R.C.,* 31 January, 1896, n. 3880: An ... a fidelibus intra Missam cani possunt iuxta antiquum morem . . . preces vel hymni lingua vernacula compositi in honorem Sancti vel Mysterii, cuius festum agitur? *Resp.* Affirmative, de consensu Ordinarii, quoad Missam privatam; Negative quoad Missam solemnem sive cantatam.

31 March, 1909, n. 4235.8: Utrum Preces et Hymni liturgici, v. g. Introitus, Communio, Hymnus *Lauda Sion,* a choro musicorum in lingua vernacula cantari possint infra Missam privatam; an vero eiusmodi cantica tantum prohibita sint coram Sanctissimo exposito, ad normam n. 3537.3. Rrrp. Negative ad primam partem iuxta decretum relatum n. 5537.3; ad secundam iam provisum in prima.

(i) It cannot be in dispute that the various replies of the Holy Sec relating to what is known as *Missa Dialogata* have in mind the recitation by the faithful of parts of the Mass prayers in Latin, and it is now clearly defined what is and what is not permitted.[1] The practice has arisen through a desire to participate more closely in the liturgical action by reciting, in common with the server or with the celebrant, certain parts of the Mass. The priest may not use the vernacular in saying Mass; therefore the faithful, in so far as it is permitted, secure the desired participation by using the language of the priest.

Our opinion is that the prohibition against reciting aloud in Latin

[1] Cf. Q. 115-

the parts said by the priest *secreto* must equally apply to reciting aloud these parts in the vernacular. This view is supported by the rule of *S.R.C.*, n. 4235, directed against the practice of singing, during liturgical rites, vernacular versions of the hymns; relying on canon 20, what the law forbids singers must also be forbidden when the liturgical texts are recited in the vernacular. The objection of the Holy Sec is not to vernacular prayers and hymns during Mass, but to the use of official liturgical texts in a language other than that of the liturgy. Hence Gasparri, citing these and other directions, writes: "Imo vetitum est in Missae celebratione ne fideles alta voce et lingua vulgari dicant Missae preces quae a celebrante, a subdiacono, a diacono, a ministro respondente, a choro recitantur. . . ,"1 The reply in *Fontes,* n. 915, must refer, we think, to prayers other than translations of the liturgy.

(ii) Our view of the matter is not, however, shared by some who are most competent to form an opinion. In an article on the use of the vernacular in liturgical functions, Dom Anselm Veys quotes with approval the practice, "où les enfants dialoguent en langue vulgaire soit un traduction littérale, soit une adaptation, mais alors avec un catéchiste ou lecteur, non avec le célébrant".2 The point would seem to be that the faithful using aloud the vernacular of liturgical texts are doing so as a private act of devotion, not as taking an integral part in the liturgical rite itself; and it would, indeed, be the reverse of a common participation in a rite for the celebrant to use one language and the participants another. Hence Gasparri continues in the text above quoted: "(vetitum est) ... ita ut eae preces, a fidelibus alta voce et lingua vulgari dictae, partem Missae aliquo modo constituant".

From the legal aspect of the matter, it could be maintained, no doubt, that J.R.C., n. 4375, forbids only the recital aloud in Latin of those parts said by the priest *secreto',* that n. 4235 forbids only the singing of liturgical chants in the vernacular; and that, seeing there is no certain law against reciting such parts in the vernacular, we may do what no certain law forbids. As regards *Propaganda,* n. 802 and other similar directions of ancient date, it must be remembered that in those days die dialogue Mass had not been thought of, and had not received the approbation it now enjoys. From the non-lcgal aspect, there is everything to be said for a practice which gets children to know intimately the liturgical prayers of the Mass, and it would seem curious to permit during Mass the recitation in the vernacular of the rosary or of any authorized prayers whatever, and yet to forbid prayers which the priest himself is reciting.

(iii) The proper soludon of the above doubt is for the priest desirous of introducing the practice to have recourse to the Ordinary. The Holy Sec leaves to his discretion the approval of a dialogue Mass in its various forms, and if the question we have been discussing is ever submitted to the Holy See, the answer would doubtless be that it is for the Ordinary to decide, as in n. 3880, and canon 1259. A practice which might be admirable at children's Masses could easily become an intolerable abuse at other public Masses. It appears that at least one American bishop sanctions the practice during Holy Week; "Every prayer that is read at the altar is read to the people in English."3

1 *De Eucharistia,* §851.
* *La Participation Active des Fidi/es au Culte,* p. ı$o
• *The Soifer,* April, 1946, p. i).

## 570.—"Gratiarum Actio post Missam"

*Are these prayers of the Missal preceptive in the sense that every priest is bound to recite them unless, as with all positive obligations, there exists a proper reason for omitting them?*

Canon 810: Sacerdos ne omittat ad Eucharistici Sacrificii oblationem sese piis precibus disponere, eoque expleto, gratias Deo pro tanto beneficio agere.

Â/7. *Celebr. Miss.,* XII, 6: . . . redit ad Sacristiam, interim dicens Antiphonam *Trium Puerorum* . . . dicit Antiphonam *Trium Puerorum* cum Cantico et aliis orationibus. . . .

7: In Missa solemni . . . discedit cum ministris ordine et modo quo venerat.

*Ordo Missae* (ad finem): dicit Antiphonam *Trium Puerorum* cum reliquis. . . .

*Preces et Pia Opera,* n. 690 (titulus): Preces in Missali Romano pietati sacerdotum propositae, ut dicendae, pro eorum opportunitate, post Missae celebrationem: Ant. *Trium Puerorum,* etc.

*S.R.C.,* i August, 1938; *A.A.S.,* 1938, XXX, p. 292: Rubricae de indulgentiis appositis ad Orationes post Missae celebrationem vel recitandas iuxta *Ritum serv. in celebr. Missae* (tit. xxii, n. 6) vel pro opportunitate dicendas. . . .

It is not in dispute that there is no obligation to recite the prayers after Mass which follow the *Benedicite* with its antiphon, Ps. 150, versicles and three prayers; for these following prayers are entitled "Pro opportunitate sacerdotis dicendae", whereas the *Benedicite,* etc., has no such title.

One is bound from the nature of things, as well as from canon 810, to make a thanksgiving after Mass, and the point is whether this thanksgiving must include at least the *Benedicite,* etc. Speaking in quite general terms, commentators on the rubrics recognize for the most part an obligation *sub levi* from the wording of the rubrics; moral theologians, on the other hand, regard it as at least a probable opinion that there is no strict obligation even *sub levi.*[1] Acrtnys is both a moral theologian and an exponent of the rubrics; in *Theologia Moralis,* II, §251, he is with his theological brethren, but in his *Compendium Idturgiae Sacrae,* §45, the point is not argued at all, though this may be due to the editors of the two works being different.

The most striking example of this difference of emphasis is in *Preces et Pia Opera,* η. 690, where the title to these prayers is clearly an argument against the view that the prayers are obligatory. But when the *Sacred Congregation of Rites* required the new indulgences to be printed in the missal, it is equally clear that a distinction was drawn between the prayers which are of obligation and those which are not.

"Opere, cui praestando quis lege aut praecepto obligatur, nequit indulgentia lucrifieri, nisi in eiusdem concessione aliud expresse dicatur. . . ." This rule of canon 932, declaring that in principle one cannot gain indulgences by performing a work which is already of obligation, docs provide, perhaps, a further argument against the obligatory character of *Benedicite,* etc. Those who are loth to extinguish the obligation, owing to the rubrics of the Missal

[1] E.g. O'Connell, *The Celebration of Masr,* II, p. 137; Davis, *Moral Theology,* III, p. 103.

being so explicit, have some little difficulty in explaining the point. Fr Ilanssens, S.J., observes: "Res tamen ita explicatur: hic namque conditiones tantum indulgentiarum definiuntur et quoniam acquisitio alicuius indulgentiae libera est, etiam illius acquisitionis conditiones, prout conditiones sunt, tamquam actiones liberae exhibendae sunt, quamvis sint aliis de causis praescriptae."[1]

Our opinion is that the obligation of reciting these prayers is not established with certainty, and that they may be omitted without sin, even venial sin. The rubric for solemn Masses and the *Caeremoniale Episcoporum* give no directions about them; the wording of d'.R.C., 1 August, 1938, supporting the rubric XII, 6, and the title of the prayers in the missal, indicate that there is an obligation; but this is negatived by the *Sacred Penitentiary* in the title to *Preces et Pia Opera,* η. 690, and the principle about indulgences in canon 932; and if these intrinsic reasons are considered insufficient, the teaching of the moral theologians provides at least an extrinsic probability which may safely be followed.

The distinction between *Benedicite,* etc., and the prayer entitled "Pro opportunitate sacerdotis dicendae" would then be, perhaps, that the *Benedicite,* etc., is an official and public thanksgiving, whereas the others are for the private devotion of the priest.[2]

## 571.— Air Raids: Liturgical Prayers

*German wireless alleged that English Catholics during the war were using a special book ofprayers containing maledictions against German aviators, that bombs destined for Germans were blessed, and other inventions of this kind. Are there, as a matter offact, any prayer formulas in the BJtual or other liturgical sources which could be used during air-raids ?*

The *Catholic Bulletin of Foreign News,* published by the Ministry of Information, gave in the issue of 7 September, 1940, the following translation of a broadcast from Radio Paris on 50 August:

"The English, losing their nerves, arc finding their last refuge in their religious faith. Cardinal Hinsley, who in the last few weeks has repeatedly blessed the bombs of the R.A.F., has now published a book of prayers which is being distributed in hundreds of thousands all over the world. The first prayer in this booklet is to be said when English 'planes have taken to the air to attack Germans or Italians. The second prayer in this *billet-doux* is designed to meet the case of German aeroplanes dying over England's holy soil. In this prayer the Almighty is asked to strike the pilot with lightning, giving him a painless but rapid death."

(i) It was pointed out, of course, that I lis Eminence the Cardinal knew nothing of the matter, and it is difficult to discover on what minimum of truth this quaint story was based. It would be comforting to think we shall never have air-raids again, but perhaps a little optimistic. We all know the prayer from the Missal *tempore belli',* "ut inimicorum suorum feritate depressa, incessabili te gratiarum actione laudemus", and prayers from the Mass

[1] *Periodica,* 1938, XXVII, p. 434.

[2] *Tlx Clergy Review,* 19^6, XI, p. 382. Dom Ernest Graf, O.S.B., in this article assumes throughout that the *Benedicite,* etc., are of obligation.

*contra paganos* would not be out of place for some, at least, of the enemy leaders: "Respice in auxilium Christianorum; ut gentes paganorum, quae in sua feritate confidunt, dexterae tuae potentia conterantur." The "Benedictio Bombycum" in *Rituale Romanum,* Appendix, n. 62, seemed, at first sight, to offer a clue to the mysterious incident of bomb blessing; but, rather disappointingly, it was found to be a blessing of silk-worms. In n. 12 of the *Benedictiones Reservatae* there is a *Benedictio Deprecatoria* directed against harmful insects "et alia animalia nociva", which is entirely unsuited for use against human beings, since it curses them heartily. But, if the maledictory portions are omitted, it is not at all a bad formula against hostile aircraft: "ut confcstim recedatis a campis ct agris nostris, nec amplius in eis habitetis, sed ad ea loca transeatis, in quibus nemini nocere possitis . . . deficientes de die in diem et decrcsccentes, quatenus reliquiae de vobis nullo in loco inveniantur, nisi necessariae ad salutem et usum humanum".

(ii) The new formula for the blessing of an aeroplane was sanctioned by the *Congregation of Rites,* 24 March, 1920, and is described in the modern *Rituale Romanum,* Appendix, n. 26, as "Benedictio machinae itineri aereo destinatae". The reference in the second prayer to the Holy House of Loreto is, perhaps, a little ominous, from certain points of view, and also the description of an aeroplane "ad res humanas promptius expediendas". Since it is not generally known, we reprint the text of this formula:

℣. Adiutorium nostrum in nomine Domini.
℟. Qui fecit caelum et terram.
℣. Bénedic, anima mea, Domino.
℟. Domine, Deus meus, magnificàtus es vehementer.
*V.* Qui ponis nubem ascensum tuum.
℟. Qui âmbulas super pennas ventorum.
*V.* Domine, cxâudi orationem meam.
℟. Et clamor meus ad te veniat.
*V.* Dominus vobiscum.
℟. Et cum spiritu tuo.

Orémus. Oratio.

Deus, qui omnia propter temetipsum operâtus es, et cuncta mundi huius elementa in usum humani generis destinAsti: bene ✠ dic, quaesumus, hanc machinam (has machinas) itineri aereo deputdtam (deputatas); ut ad laudem ct gloriam nominis tui latius propagandam, ct ad res humanas promptius expediendas, damno quovis et periculo remoto, deserviat (deserviant), et in omnium fidelium, camdcm machinam (câsdem machinas) adhibentium, animis caelestia foveat (foveant) desideria. Per Christum Dominum nostrum.

℟. Arnen.

Oremus. Oratio.

Deus, qui beatae Mariae Virginis domum per Incarnât! Verbi mysterium misericorditer consecrasti, eamque in sinu Ecclesiae tuae mirabiliter collocdsti: cffûndc, quaesumus, bene ✠ dictionem tuam super hanc màchinam (has machinas); ut, qui per eam (eas) itineri aereo sub tutela eiùsdcm bcdtac Virginis se commiserint, eo quo tendunt prospere perveniant, et incolumes ad propria revertantur. Per cumdcm Christum Dominum nostrum.

℟. Arnen.

Oremus. Oratio.

Deus, in te spcràntium salus, fâmulis tuis iter aéreum peragentibus ac tuam opem invocantibus, Angelum bonum de caelis comitem benignus adiùnge: ut ab eo custodiantur in omnibus viis, ct ad propositam sibi metam feliciter dcducàntur. Per Christum Dominium nostrum.

R. Arnen.

*Sacerdos aspergat aqua benedicta.*

(iii) Those accustomed to reciting Compline before going to rest perceived, as they never did before, the fittingness of the prayer *Visita quaesumus,* etc., and of certain verses in the Dominical psalms: "a sagitta volante in dic, a negotio perambulante in tenebris". For the raiding enemy the concluding phrases in the blessing of vehicles (nn. 24 and 25) are as good as any Christian could devise: "ut viam mandatorum currentes ad eelestem patriam feliciter pervenire valeant . . . post omnes viae et vitae varietates, aeterna gaudia consequi mercantur".

(iv) Finally, the *Sacred Penitentiary,* 25 December, 1942, issued the following decree which confirmed the conviction of most Catholics that the best form of prayer during an air raid is a good act of contrition:

SSmus D. N. Pius div. Prov. Pp. XII, paterna caritate gregis Sibi commissi saluti semper intentus, preces quorumdam fidelium, qui hisce temporibus ob aereas incursiones in vitae discrimine versantur, libenter accipiens, in Audientia infra scripto Cardinali Pacnitentiario Maiori die 19 vertentis mensis concessa, benigne elargiri dignatus est ut christifidclcs omnes, qui, quotiescumque civitates aliaque loca aereae incursiones aggrediuntur, saltem contriti cum vero amoris in Deum ct suorum peccatorum doloris actu, invocationem "lesu, miserere mei", quavis lingua redditam (v.g. Gesù mio, misericordia—Mon Jésus, misericorde—My Jesus, mercy—Mein Jesus, Barmhcrzigkcit), devote recitaverint, Indulgentiam plenariam consequi valeant.

Praesenti valituro tantum hoc bello perdurante. Contrariis quibuslibet minime obstantibus.

### 572.— Ikcbnsation

*Is it possible to formulate a simple principle to be observed in the incensation of various persons and objects?*

*S.P..C.,* 29 May, 1900, n. 4057.2: Thurificatio SSnii Sacramenti publice expositi, ct Canonicorum, perficienda est duplici ictu in quolibet ductu iuxta decreta. . . . Quaeritur ergo: 1. Utrum idem observandum sit in thurificatione Crucis Akaris, sacrarum imaginum, libri Evangeliorum ante cantum Evangclii in Missa solemni, Episcopi, celebrantis, Ministrorum, Bcncficiatorum, aliorumque de Choro ct Altari, iis exceptis qui non singillatim incensantur? 2. Pcrficinc debent duplici ictu ductus in thurificatione Altaris, et in solemni benedictione Candelarum, Cinerum et Palmarum? *Resp.* Affirmative quoad primam partem, negative quoad secundam.

From a large number of references which might be given to decrees and rubrics in liturgical books, we have selected the above as providing the

nearest thing to a principle. Fr O'Connell in *The Celebration of Mass,* III, iv, gives a very full and accurate study of the subject, and a shorter summary may be seen in *Collationes Tomacenses,* 1933, pp. 347-50.

As explained in Q. 171, the difference between "ductus" and "ictus" is a necessary preliminary to understanding the subject. In English confusion is sometimes caused by using the word "swing" for both notions.

"Ductus" is the action performed in raising the thurible from one's waist. It is done *three* times when incensing the Blessed Sacrament, a relic of the Passion, the altar cross and images of Christ, the book of the gospels, the celebrant, bishops and prelates superior to them. It is done *twice* for relics and images of the saints, for prelates who are not bishops, for dignitaries and canons, and for sacred ministers vested. It is done *once* on other occasions. The incensing of persons is, however, subject to the following modification in principle: when someone of superior rank is present the "ductus" is reduced; thus a bishop in the presence of a cardinal, or the celebrant in the presence of a bishop, receive a double "ductus".

"Ictus" is the action performed by the wrist moving the thurible, already raised by the "ductus", towards the person or article to be incensed. With the exceptions mentioned in the above reply, ad 2, the "ictus" is, in principle, double.

## 573.—Instrumental Music

*ConId one properly seek permission, on special occasions such as weddings, for the use in church of certain orchestral instruments?*

*Motn Profrio,* 22 November, 1903, n. 20 (C.T.S. tr. from the Italian): Bands are strictly forbidden to play in church, and only for some special reason, after the consent of the bishop has been obtained, may a certain number of specially chosen wind instruments be allowed, which must be carefully selected and in proportion to thcii object; and the music they play must always be reverent, suitable, and in every way like that of the organ.

J.R.C., n. 4156 (1905, but no other date given), ad 1: An, ct in quibus festis permitti possit usus instrumentorum, quae *(vulgo* violines, violas, violoncello, contrabasso, flauta, clarinctcs, fagots, trompas) in elencho recensentur? *Pesp.* Ad primam partem: Affirmative; ad secundam partem: In illis functionibus et temporibus, in quibus sonus organi aliorumquc instrumentorum non prohibetur a Cacremoniali Episcoporum, a praedicto Motu Proprio, et a Decretis S.R.C.; verum iuxta prudens Ordinarii arbitrium, in singulis casibus.

Unless the Ordinary has made it known that he will not allow orchestral instruments in the churches of his diocese, permission may properly be sought for some special occasion. The previous n. 19 of the *Motu Proprio* explicitly forbids in churches the pianoforte, drums, cymbals and triangles, and the principle seems to be that the Ordinary may, if he desires, permit the use of instruments the sound of which has some resemblance to those produced by a church organ. The request to the Ordinary should indicate the kind of instruments it is proposed to have and the pieces to be played.

## 574.—"Benedictio Mulieris Praegnantis"

*The opinion was given in O.* 558 *that since childbirth was always accompanied by some danger, this blessing of the RJiual could be given in al! cases. What then is the force of the induit obtained by some Ordinaries permitting the blessing to be given in all cases?*

J.R.C., 24 February, 1928, in Westminster *Ordo,* 1948, p. 129: Franciscus Cardinalis Bourne, Archiepiscopus Westmonasterien. ad pedes Sanctitatis Vestrae provolutus, humiliter exponit quod vigendo nostris diebus tanto-pere opiniones anticonceptionistac, opportunum necnon necessarium videtur adiuvare et munire uxores catholicas subsidiis spiritualibus ut generoso animo onera matrimonii ferant: ideoque humilis Orator petit ut *Benedictio mulieris praegnantis* quae in Rituali Romano nonnisi in periculo partus datur, possit impertiri in omni casu praegnationis. Et Deus, etc. . . .

Sacra Rituum Congregatio, vigore facultatum sibi specialiter a Sanctissimo Domino nostro Pio Papa XI tributarum, attentis expositis peculiaribus adiunctis, benigne annuit pro gratia iuxta petita, servata formula Ritualis Romani in casu. Contrariis non obstantibus quibuscumque.

A. Card. Vico.,
*Ep. Portucn. Praefus.*

*Die* 24 *Februarii* 1928.

The force of this induit may be seen by comparing the phrase "in periculis partus", which is the sub-title of the blessing in the *Riiuale Romanum,* Appendix, n. 44, with the phrase "in omni casu praegnationis" contained in the induit. It is our view, following the common teaching of the writers, that the blessing may be given without an induit on every occasion of childbirth, even though it is perfectly normal and unattended by any special risks, for example, those due to an abnormal condition of the mother's health. This view is amply confirmed by the words of the rite itself.

Pregnancy (in omni casu praegnationis) is clearly something distinct from childbirth, in the ordinary use of language. It is a habitual condition spreading over several months, whereas childbirth or the act of parturition is at most a matter of a few hours. The induit permits the blessing to be given to any woman who is pregnant, whereas the blessing in the ritual is restricted to the time of childbirth. If the petition read in its closing words, "in omni casu partus", the induit would be an argument against the view we have maintained that no special danger is required. As it stands it offers no difficulty at all, in our view. Those who enjoy the induit may give this blessing, which the Ritual employs for the time of childbirth, to pregnant mothers at any time, and there is nothing in the wording of the rite which is inconsistent with it being given to such.

If the induit is not enjoyed, it is quite clear that the blessing may not be given except in childbirth, i.c. to a woman in labour, which may be widely interpreted to include the time when the birth is expected. One would not criticize an even wider interpretation of the time, anticipating it by a few days, since what the authors conveniently call a "moral" time reckoning is often applied to things of this kind.

## 575.—St George: Patron or Protector?

*The dedication of this country to Our Lady and to St Peter, ordered by the "Ritus Servandus" to be renewed yearly, seems to argue that these and not St George are the patrons of England. This view is confirmed by the fact that St George was declared its "protector" by Benedict XIV. Which saint is actually the patron of this country and what is the difference between "patron" and "protector"?*

(i) "Patron" and "protector" are, in liturgical usage, synonymous, though the former is more common in the decrees of the *Congregation of Bites.* "In sensu liturgico sanctus ille qui ab aliquo pago vel civitate, provincia aut regno eligitur ut christianac plebi in periculis succurrat, in necessitatibus opem ferat et apud Deum reorum causam gerat, dicitur loci patronus."[1] "On appelle patron d'un lieu le saint qui a été choisi et est honoré comme le protecteur spécial d'une nation, etc."[2] In classical use "patronus" was one who protected a region or province, and the word was also used for one who advocated the cause ot a client in a court of justice; Lewis and Short give "protector" as the first meaning of the word, and of others derived from it. In ecclesiastical use both meanings are applicable to a patron saint.

(ii) St George is the patron of England and was honoured as such centuries before Benedict XIV declared him to be the kingdom's protector. He is styled "patron" in various documents regulating his feast, e.g. 13 March, 1853, an^ January, 1852; in others he is named "protector", e.g. 28 December, 1856; both terms are used 24 May, 1863: "cuius patronus atque invictus protector ab antiquissimis temporibus fuit, et de quo statuit Benedictus XIV per decretum S.R.C. sub dic 8 January, 1749, ut in Suffragiis Sanctorum fiat in Anglia tantum commemoratio S. Gcorgii Angliae Patroni . . ."[3]

If any further proof is needed, it is found in the fact that the liturgical privileges and honours permitted by the *Congregation of Bates* on the feast of the principal patron of a country arc everywhere in England enjoyed on the feast of St George. "Fcriatio", which includes the obligation of hearing Mass, is no longer the rule in the common law from canon 1247, §2, but the obligation of *Missa pro Populo* remains. Relying on this liturgical celebration of St George's Day, the *Catholic Directory,* 1948, p. 2, rightly puts this saint as the patron of England at the head of the list.

(Hi) In the allocution of Leo XIII replying to an address presented to him by English pilgrims, 27 February, 1893, the Holy Father spoke of the devotion of the English to Our Lady and to the Prince of the Apostles the primary patron of the Kingdom. He exhorted them to revive devotion to these "two patrons of the faith" and continued: "wc most earnestly exhort the faithful of England to follow the example of their forefathers, and, by a solemn religious rite, to dedicate and consecrate the whole country to the most holy Mother of God, and to the Blessed Prince of the Apostles". In compliance with the Holy Father's desire, the dedicatory prayers in the *Ritus Servandus* were introduced and ordered to be recited on the days

[1] Piacenza, quoted in *Lpbemerides LUtcrgicae,* 1927, p. 117.
[1] Hiibert, *Leçons de Liturgie,* I, §103.
[*] *Decreta IV Cone. Prov. ICestm.,* cd. Π, pp. 84, 139, 143, 143, 203.

specified.[1] In the same year the additional prayer commemorating this double "dedication" was added to the Mass or the *English Martyrs, 4* May.

This does create a difficulty which is not avoided by regarding St George as the *secondary* patron, since—quite apart from the popular persuasion that he is *primary*—the liturgical privileges enjoyed are not permitted on the feasts of secondary patrons.[2] One solution is to regard Our Lady, St Peter and St George as "patroni aeque principales";[3] the liturgical privileges proper to a principal patron are inoperative on 29 June since the feast has them already; for Our Lady it would be necessary, it seems, to choose one of her feasts and celebrate it as the patronal day.

Failing a better and an authoritative solution, our own view is that Pope Leo XIII spoke in reply to an address which mentioned Our Lady and St Peter as patrons in a wide sense of the word: England is traditionally called Our Lady's dowry, and the devotion of the English to St Peter, as witnessed in the number of churches dedicated to him from the earliest times, is beyond all doubt. But the idea of a country being Our Lady's dowry is not exactly that of her being its patron saint; and the notion of the "titular" of a church is wholly different from that of "patron of a place": for one thing, a Divine Person or mystery may be the titular but obviously not the patron.[4] The patron of a country, at least since 1630, may be constituted only on certain conditions; amongst others the approval of the *Congregation of Rifes* is required.[5] But, with proper authority, there is nothing to prevent the dedication of a country or of a community to any Divine Person or to any saint; our *Rifus Serrandus* contains dedications or consecrations to Christ the King and to the Sacred Heart, as well as to Our Lady and to St Peter; it is a matter of popular devotion aroused by some event or emergency. But the patron saint of a country is permanently in that position, whether there is a popular devotion or net, and we think it as certain as anything can be that the principal patron saint of the English is St George.

## §2. DIVINE OFFICE

### 576.—Choir Obligation

*The Code states that four are required for choral recitation of the divine office. Some, however, hold that three will suffice, others even two. The latter opinion seems based on the directions of the Code that fewer than four will suffice if the constitutions of any institute so decide; the canonical axiom "tresfaciunt collegium" appears to he set aside, May the opinion be followed that three, or even two, will suffice in all cases?*

Canon 6io, §i: In religionibus sive virorum sive mulierum, quibus est chori obligatio, in singulis domibus ubi quatuor saltem sint religiosi choro obligati et actu legitime non impediti, et etiam pauciores, si ita ferant

[1] The Pope's allocution may be seen in *heeds Synods* (1911), p. 181. Cf. *Westminster Diocesan Synod XXXII* (1893), p. 40.

[3] Cf. *Ephemerides hiturgicae (Jus* et Praxis), 1939, p. 99.

[4] J.R.G., n. 386, mentions such.

[5] Cf. *Periodica,* 1937, p. 395; Callewaert, *hitstrgicae Institutiones,* II, §377.

constitutiones, debet ad normam constitutionum quotidie divinum officium communiter persolvi.

(i) The obligation will usually be settled by local custom if the constitutions do not expressly determine it, and, since the obligation is on the community, the ruling of the superior must in practice be followed. The Dominicans are bound to the choral recitation of the office even if there arc only three "legitime non impediti" available; cf. Priimmer, *Manuale Juris Ecclesiastici,* n. 23 5. Some canonists take for granted that there are particular constitutions which require the choral office even if there are only two available: Toso, *Commentaria Minora,* p. 188; Fanfani, *De Jure Religiosorum,* n. 396; *Ephemerides Liturgicae,* 1931, p. 67: "difficile enim est comprehensu cur Codex non *très* pro 'pauciores' eligeret, si tantum tres obligare voluisset".

(ii) The common law extinguishes the choir obligation if there are less than four available, and the number is to be reckoned exclusive of visitors from other houses of the same institute; cf. *Commentarium pro Religiosis,* 1940, p. 84. Granted that choral office is obligatory owing to four being available, the question then is whether the law of canon 610, §1, is being violated by the absence of two or even of one from choir. There are various opinions. Goycncche, *De Religiosis,* §78: 'Obligationi non videtur duobus satisfieri; satisfit certo clericis tribus ct probabilius etsi sint novitii." Vermccrsch-Creuscn, *Epitome,* I, §768: "Non ideo tamen, contra Fanfani, n. 266, existimabimus *ubique* gravis chori obligatoinc satisfieri posse per duos qui officium psallant." Berutti's interpretation seems the best, *De Religiosis,* §123 : "Quidquid vero de eorum sententia iudicetur qui docent chori obligationi legitime satisfied etiam per duorum tantum religiosorum praesentiam in choro, certum omnino est quod non servaretur praescriptum can. 610, §1, de officio divino *communiter* persolvendo si unus vel duo religiosi—choro obligati et actu legitime non impediti—choro non intersint eo quod duo religiosi ibidem iam adsunt qui onus communitatis legitime adimpleant." *Ephemerides Eiturgicac,* 1921, pp. 41-67, contains a long dissertation on the whole subject.

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### 577.—Hour for Anticipating Choral Matins

*What is the earliest time at which choral recitation of Matins may be anticipated validly?*

*S.R.C.,* 12 May, 1905, n. 4158.2: Utrum etiam in publica seu chorali recitatione Officium incipi possit hora secunda pomeridiana? *Resp.* Negative.

*S.C.C. Mutinen,* 12 November, 1644: Sacra Congr. Cone, censuit petitam facultatem recitandi Matutinum esse oratoribus concedendam post Completorium praecedentis diei, pro arbitrio tamen Episcopi, et dummodo lapsa sit hora tertia post meridiem. (Thus summarized in Ferraris s.v. *Matutinum,* n· 35·)

Canon 33, §i: In supputandis horis diei standum est communi loci usui; sed in privata Missae celebratione, in privata horarum canonicarum recitatione ... licet alia sit usualis loci supputatio, potest quis sequi loci tempus aut locale sive verum sive medium, aut legale sive regionale sive aliud extraordinarium.

(i) Though the rubrics of the breviary assume that Matins will be recited in the middle of the night, the attempts made by authority to enforce the rule have failed, so far as the common law is concerned. Even in St Thomas's day anticipation was accepted for reasons both theological and canonical: . cum cnim dies incipiat a media nocte, videtur quod matutinas sequentis dici dicat in die praecedenti. . . . Sed contra, Deus dementior est quolibet homine. Sed homo non imputat debitori in culpam, si debitum sibi reddat ante tempus. Ergo multo minus Deus. r\d primum dicendum . . . quantum ad ecclesiasticum officium ct solemnitatum celebritates incipit dies a vesperis: unde si aliquis post dictas vesperas et completorium dicat matutinas, jam hoc pertinet ad diem sequentem."[1] It is quite certain that this outlook applied even to the choral office, at least for those who obtained an induit, though the Holy See continued to discourage it up to the middle of the eighteenth century.[2] Sanction for its anticipation is now implied in the rubric for the antiphon of Our Lady when Matins immediately follows Compline.

(ii) The hour at which Matins might be anticipated came to be regarded as about half-way between midday and sunset, a reckoning which was explicitly recognized as lawful for private recitation by J.R.C., 16 March, 1876, n. 3391: "quando sol medium cursum tenet inter meridiem et occasum". The custom of using this reckoning even for the choral office became common, and is often found in the *horarium* printed in the liturgical calendars. By 1905 it was the opinion of most commentators that Matins might be anticipated privately as early as 2 p.m. and T.R.C., n. 4158, sanctioned this reckoning, whilst explicitly refusing to sanction it for the choral office. Opinions to the contrary held before 1905 must now be rejected. The position at the moment is that choral Matins may not begin at 2 p.m. but we have no certain ruling as to what hour in the afternoon it is permitted. Failing anything more definite we rely on 12 November, 1644, for the view that, apart from induits and lawful customs to the contrary, the earliest hour for choral Matins in the common law is 5 p.m. This view is supported by *Ephemerides Eiitirgicae,* 1931, p. 47, a journal of recognized authority on such questions: "Si quaeras quanam hora vespere praecedente Officium possit inchoari, dicendum est prohibitum esse ne tertia hora nondum elapsa incipiatur." The opinion, however, is widely held that the time directions, even for choral office, do not bind *sub gravi,* but in no case could the time be anticipated before 2 p.m. Even for private recitation an induit is required for fulfilling one's obligation before that hour.

(iii) In actual practice there should be no problem, since the appointed hour is usually determined in the rules and constitutions of religious or collegiate bodies bound to public recital of the office. Assuming, let us suppose, that this hour is 3 p.m., it follows from canon 33, §1, that the reckoning is that in common use. If legal double summer time is in common use, as in England, 1947, Matins could begin at 3 p.m. by the public clocks, even though by Greenwich time it is actually 1 p.m.

[1] *Qnoiil.* V, 28; Parma, IX, p. 541·
[2] E.g. 5.R.C., 13 July, 1754. «· 2432.2·

### 578.—Hour for Anticipating Private Matins

*Can it be maintained that Matins may be started at the beginning of the second hour, i.e. one o'clock, instead of waiting until two o'clock, i.e. the completion of the second hour?*

*S.ÏCC.*, 12 May, 1905, directed that the teaching of approved authors could be followed on the question of anticipating Matins at two o'clock. This phrase was modified when the document was published amongst the authentic decrees of the Congregation in 1912, n. 4158, 1: "Utrum, in privata recitatione, Matutinum pro insequenti dic incipi possit hora secunda pomeridiana, aut standum sit tabellae Directorii diocccsani, omni tempore. *Resp.* Affirmative ad primam partem, negative ad secundam."

(i) It is our opinion that the completion of the second hour is meant, that is to say, Matins may be started when the clock has struck two, whether one follows natural or legal time. The principle of interpreting laws in canon 18 provides some reasons for this view: "Leges ecclesiasticae intcliigendac sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos Codicis parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum." The proper signification of the words seems to be in favour of our opinion; otherwise "una hora pomeridiana" could bear the meaning of midday, and "meridie" could presumably mean 11 a.m., all of which would be, to say the least, extremely confusing. Take, as an example of the Code's method of indicating the time, canon 821, §1 : Missae celebrandae initium ne fiat . . . serius quam una hora post meridiem; this clearly refers to the clock striking 1 p.m. and "pomeridiana" is the exact equivalent of "post meridiem". As an indication of the legislator's intention, one has only to consider the many induits current at the present day extending the time limit of the common law to 1 p.m. in some cases and to midday in others: there would be no point in these reckonings unless it is taken for granted that the legislator means the completion of the hour in each case; that is to say, an induit for 1 p m. is useless if this is permitted by the common law, and an induit for midday would be identical with an induit for 1 p.m. Canon 33, §1, docs not indeed expressly settle the point, but it docs declare: "in supputandis horis dici standum est communi loci usui"; it is the common use everywhere to regard "2 p.m." as meaning the second hour completed. Some diocesan statutes used to put the matter beyond all dispute, in days previous to 1912, by using the phrase "clapsis duabus horis post meridiem".

(ii) Nevertheless, the opinion suggested by our correspondent has been taught in many European seminaries, according to a writer in *l'Ami du Clergl,* 1924, p· 503. and in Roman colleges. We have examined all the manuals at our disposal and cannot find this view even mentioned. The only argument we can conceive in its favour is that the second hour of the afternoon begins at 1 p.m., and that the decree is capable of bearing this meaning from the words employed—hora secunda pomeridiana. The view is decisively rejected by *l'Ami du Clergl,* both in 1924 and in 1927, p. 551, but bearing in mind the abundant facilities which exist for obtaining induits permitting the anticipation of Matins even from midday, the law cannot be regarded as very strict, and though our own view is unfavourable to the

suggested interpretation, we would not deny anyone the right to regard it as "probable".

### 579.—Indult for Anticipattng Matins

*The previous answer implies that only those who enjoy an induit, which is easily obtainable, may anticipate Matinsfrom midday. There exists, however, a declaration of "Propaganda", ( December,* 1935, *which extends the privilege indiscriminately to all. It would seem therefore that an induit is not required since* 1935.

*S.R.C.,* ia May, 1905, n. 4158.1: Utrum, in privata recitatione, Matutinum pro sequenti dic incipi possit hora secunda pomeridiana, aut standum sit tabellae Directorii dioeccsani, omni tempore? *Resp.* Affirmative ad primam, negative ad secundam.

*Propaganda,* 6 December, 1935 . . . declaravit privilegium anticipandi a meridie recitationem Matutini cum Laudibus dici sequentis in favorem Piae Unionis Cleri a Missionibus, iuxta rescriptum *S.C. de Propaganda Fide,* sub dic 2 Decembris, 1921 datum, valere *pro omnibus* qui sacrum officium recitare tenentur.

(i) The common law now is that the private recitation of Matins is permitted from 2 p.m. on the preceding day. The original reply of *S.R.C.,* 12 May, 1905, was the familiar "consulantur probati auctores", but in the authentic text issued in 1912 we find this phrase replaced by a simple affirmative as in n. 4158.T. The Holy See has definitely sanctioned the custom of reciting Matins privately from 2 p.m. of the previous day. If, however, the rescript of 6 December, 1935, permits all persons who are bound to recite office the privilege of anticipating Matins from midday, it must follow that the 2 p.m. rule is no longer the common law, in which case all discussion about the precise meaning of 2 p.m. is unnecessary and irrelevant.

(ii) We must observe, firstly, that a decision of *Propaganda* applies only to those under its jurisdiction, and that any modification of the 2 p.m. common law rule "pro omnibus" would have to come from *The Congregation of Rites.*

But it is, we think, quite certain that the declaration of 6 December, 1935, docs not relax the common law even for those under the jurisdiction of *Propaganda.* The rescript was given in order to clarify the previous one dated 2 December, 1921 : "Sanctitas sua . . . dignata est concedere ut singuli *Sacerdotes* oui nomen dederint vel daturi sint in posterum Piae Unionis Cleri a Missionibus, anticipare possint vel a meridie recitationem Matutini cum Laudibus subsequentis dici dummodo tamen officium diei iam persolverint." Since the privilege was explicitly given only to the priest members of this association, and many of its members are clerics in major orders who have not yet reached the priesthood, it was doubtful whether these latter enjoyed the privilege. The solution of the doubt was that the privilege is for all who arc bound to the recitation of office, it being understood that "all" means "all those who arc members of the association, whether priests or not".

There is, perhaps, some basis in the wording of the decbration, for supposing that "pro omnibus" refers to others besides members, but we

l *A.A.S.,* 1935, XXVII, p. 489; ***Th*** *Clergy Review,* 1936, XI, p. ajr.

know of only one commentator, to whom our correspondent refers, who holds this view. Coelho, in *Corso diLiturgia Pnmana,* Vol. IV, p. 30, writes: "Un Decreto dcllc *S.C. di Propaganda Fide,* del 6 dicembre, 1935, estende a tutti il privilegio, chc prima aveano gli ascritti alia Pia Unione Missionaria del Clero, di anticipare a mczzogiorno la recita del Mattutino c dclle Lodi dei giorno seguente." We think this is incorrect, and the commentator in *Periodica,* 1936, XXV, p. 19, expressly warns readers against falling into this error: "Privilegium ergo nullomodo extenditur ad sacerdotes vel clericos qui huius Piae Unionis Cleri a missionibus membra non sunt . . ."

### 580.— Anticipating Litanies

*In the monastic breviary the rubric at the end of St Mark's office reads: "Hodie qui non intersunt Processioni Litaniarum, dicant illas privatim post Laudes. . . ." If Matins and Lœuds are anticipated, may the Litanies also be said on the preceding evening?*

The Roman breviary has a similar direction and, as diocesan calendars note, the Litanies may not be anticipated. This is the ruling of 5.R.C., 28 March, 1775, n. 2503.4: "An ex sensu Rubricae positae in Breviario in Festo S. Marci et in Feria secunda, tertia et quarta post Dominicam quintam Paschae, recte inferatur quod Litaniae Sanctorum de praecepto recitandae in eodem Festo S. Marci et in triduo Rogationum anticipari possint, atque recitari post Matutinum ct Laudes dic antecedenti, ab iis qui Processioni sequentis dici non interveniunt? *ILesp.* Negative." We are of the opinion that, unless an induit to the contrary has been obtained, this direction applies to all who arc bound to recite the Litanies, whether from the Roman or the monastic breviary.

### 581.— Second Nocturn Lessons

*St Clement I was, according to the breviary, tied to an anchor and thrown into the sea. Yet the "Catholic Encyclopedia" states that nothing is known of his life and death. Is it inadvisable to perpetuate such breviary traditions in sermons?*

Many of these lessons arc, of course, open to criticism, and their reform has long engaged the attention of the Holy See. Benedict XIV set up a congregation for the purpose, but though its investigations resulted in four volumes of notes, no reform has yet taken place. Some of the conclusions of this congregation may be seen in *Analecta Juris Pontificii,* 1885, nn. 214, 215, 217. The question arose again during the pontificates of Pius VI and Pius IX, and Leo XIII set up a special commission in 1902 for the study of historico-liturgical questions. No doubt a reform will be carried out in course of time,[1] pending which two views arc possible concerning the popular use to be made of the facts narrated in these lessons.

It could be held, we suppose, that the quaint and curious events some-

[1] Cf. *Catholic Encyclopedia,* II. col. 434, 776; Callcwacrt, *De Breviarii Romani IJ/urpia,* n. 24S; Preface to *Index Breviarii Romani* (1939); £ZL.P., 1946, p. 33.

times recorded, though lacking historical foundation, arc not beyond the bounds of possibility; that they have very likely an ascetic or spiritual value from their use in the Church for so many centuries; and that it cannot but be a desirable thing to let the people share in this benefit, if any, inasmuch as the clergy themselves are bound to read these lessons. If this view be adopted, a narration which appears to have all the marks of a pious fiction should be introduced in such a way that the hearers can easily perceive its value. For example, "The breviary preserves a popular legend which, if it is true, resembles the scriptural account of Balaam's ass: the pontiff's horse indignantly refused to carry a woman, considering it unfitting that she should be carried on an animal used by the sovereign pontiff." It is still easier to record in this way facts which arc not so startling as to demand full historical evidence, as in the instance mentioned by our correspondent. Or we might be content with saying that the breviary account of St "N." presents certain difficulties, since it is based on *Acta* which are now considered to be forgeries.

The other view commends itself to us as the best to adopt, namely, not to use the breviary account of a saint's life at all in popular expositions, since it is impossible, except for an expert, to say what historical errors may have crept in. Modern hagiographical sources, such as the one mentioned by our correspondent, are very easily obtainable, and provide a fuller as well as a more reliable narrative.

## 582.—Pater Noster "Secreto"

*It is generally understood that the "Pater Noster' is recited aloud during Mass but secretly, as a rule, in other offices, because catechumens were permitted at the latter but not at theformer. Why then is it directed to be said aloud in the "preces" at Lauds and Vespers?*

Three methods of reciting the *Pater Noster* exist in our present liturgical offices: (i) the whole is recited secretly, as before and after the canonical hours and at the beginning of Compline before the *Confiteor-*, this is, comparatively speaking, a recent introduction and arose from the practice of reciting this prayer as a private devotion; (ii) the whole is recited aloud, as during Mass and at baptisms; the explanation is undoubtedly the *disciplina arcani-*, it was reserved, together with the Apostles' Creed, for the faithful and those about to be initiated, and was originally not written out in full in the books but committed to memory; (iii) the usual method of reciting it at offices which were not, like the Mass of the faithful, reserved to the baptized, consisted in saying aloud the first and last words only, and this is still the ordinary rule; the words arc said aloud to indicate the connexion with the prayers preceding and following.

Following this ordinary rule, the *Pater Noster at* Lauds and Vespers should be said secretly, except for the first and last words. There is no completely satisfactory reason why, on the contrary, the rubric at Lauds and Vespers directs the whole prayer to be said aloud, apart from various mystical and symbolical reasons suggested by mediaeval and later writers, reasons which

l St John I, Pope and Martyr; *27* May. *leetio* ix.

really evade the difficulty which is an historical one. The reason given by Dr Croegaert in *Collationes Brugenses,* 1924, p. 475, and in his treatise *De Brevarii Romani Liturgia* (1939), p. 160, is accepted by many as the correct one, e.g. by Dr Van Doren, *Questions Liturgiques et Paroissiales,* 1934, p. 113. The exception at these two offices was introduced and explained by St Benedict in c. xiii of the Rule: "Plane Agenda (i.e. hora) matutina vel vespertina non transeat aliquando nisi in ultimo per ordinem oratio dominica, omnibus audientibus, dicatur a priore, propter scandalorum spinas quae oriri solent, ut conventi per ipsius orationis sponsionem qua dicunt 'dimitte nobis sicut et nos dimittimus' purgent se ab huiusmodi vitio."

The same chapter concludes by directing it to be recited, at other offices, in the customary manner: "Ceteris vero agendis ultima pars eius orationis dicatur, ut ab omnibus respondeatur: 'sed libera nos a malo'." The unbaptized were not normally present at monastic offices, and the reason for never reciting the prayer aloud did not, therefore, exist. St Benedict introduced an exception to the existing rule in order that, morning and evening, the monks might be moved to condone each other's offences, and from the monastic breviary the custom found its way into the Roman office.

### 583.— Confiteor in Divine Office

*How should the "Confiteor" be recited when the office is being said with no priest or cleric in major orders as hebdomadarius?*

Breviary rubric "ad Completorium": Si unus vel duo tantum recitent Officium, et in choro monialium, semel tantum ac simul ab omnibus ita fit Confessio. . . . The form given for united recitation omits "vobis (vos) fratres" and "tibi (te) pater" and has "nostri" for "vestri" in the *Misereatur.*

(i) The ruling twice given by J.K.C., nn. 512 and 1334, directed that nuns reciting the office in choir were never to substitute "mater . . . sorores" for "pater . . . fratres" but were to recite the text "prout iacet in breviario". This latter direction is now modified by the plain instruction of the rubric.

(ii) When the office is recited chorally by three or more male persons, there exist no explicit directions, so far as we can discover, on the correct method of saying the *Confiteor.* A note on the subject in *Ephemerides Liturgicae,* 1934, p. 585, dealing with choral office recited by non-tonsured novices or scholastics, teaches that the alternative form for nuns should not be used in this case. We think that this is correct and that the same solution may be applied to all cases which are not covered by the above rubric: the text is to be recited "prout iacet in breviario", following the directions of T.R.C., nn. 512 and 1334.

### 584.— Antiphon B.V.M.

*If the whole office of the day is recited without interruption, is it necessary to include the antiphon after Lauds as well as after Compline?*

Breviary rubric: In fine Laudum, vel, si post Laudes immediate subsequatur alia Hora, in fine ultimae Horae, sicuti et semper in fine

Completorii . . . dicitur una e sequentibus Antiphonis finalibus beatae Mariae Virginis.

The opinion was quite common before 1923 that it was necessary, even in private recitation of the office, to say the antiphon twice whenever the whole office was said at one session.[1] *S.R.C.*, 20 April, 1923, n. 4384.2, decided against this view, both for private and choral recitation of the office: "In utroque casu sufficit ut Antiphona finalis Beatae Mariae Virginis semel tantum, post Completorium, recitetur."

## 585.—Titular in "A cunctis"

*What are the rules for naming the titular in the "suffragium" of the breviary?*

There is a lengthy rubric on the same lines as that in the missal. It supposes that the cleric is attached to the service of a church, and that he is normally reciting the office in the church to which he belongs. If actually, for any reason, he is not in his own church or its precincts when privately reciting the breviary, the titular to be mentioned is that of his own church. The rubric of the missal also reads "titularis propriae ecclesiae", but "propriae" in this context is certainly to be understood of the titular of the church in which Mass is being said, not that of the church to which the celebrant belongs. This rule is established by several decrees, and it is part of the wider rule which requires Mass to be said according to the calendar of the place where it is celebrated. The older clergy will remember that before the Pian reform of the breviary, an imposing array of suffrages occurred on certain days. The new breviary replaced these by assigning the *A cunctis* from the missal.

It would be too considerable a task to demonstrate the logicality of all rubrics relating to offices and calendars; many influences and reasons have contributed to their formation in the course of ages, and there are many exceptions and conditions in them all. But there is a publicity about the Mass, demanding uniformity for all celebrated in the same church, which is not verified in the private recitation of office, even though, as we all know, it is still public prayer. It follows that a priest who is presiding at the public office in a church, not his own, mentions the titular of the church in which the office is being recited.

Following the arrangement adopted in the reply to Q. 6i, the rules for naming the titular in the suffrage of the breviary may be stated as follows:

(i) A priest who is not attached to any church has no titular, and the words "atque Beato N" are simply omitted, unless he is following a lawful custom which permits the name of a local patron to be inserted instead.

(ii) The rule requiring mention of the titular is subject to the following exceptions:

(a) It is omitted if the titular is a Divine Person or a mystery connected with Our Lord.

(b) It is omitted likewise if the feast or vigil happens to be that of the titular or contains a commemoration of the same. An alternative form of suffrage is accordingly given when the office or a commemoration is

[1] Cf. *I'Ami da Clergé,* 1921, p. 560; *Periodita,* 1915, XII, p. 70.

of Our Lady. The principle is to avoid mentioning the same saint twice.

(r) For the same reason it is omitted if the name is already mentioned in the prayer.

(iii) The rules of precedence arc the same as those for the *A cunctis* in the Mass. We can find no ruling on what should happen if two priests, ascribed to different churches, are reciting office together. The titular mentioned may be that of the church to which the priest reciting the prayer belongs; or it may be determined on rules of precedence; or one may be inserted at Lauds and the other at Vespers; or both may be inserted. Difficulties arise in order to be overcome: "Shall two walk together except they be agreed?"[1]

(iv) If the name of the titular is omitted, for any of the above reasons, it should not be replaced by another, e.g. that of the local patron, unless the practice is justified by a lawful custom. There is some dispute about the latter part of this statement. Some maintain that the rubric as it now stands, both in the missal and in the breviary: "In hisce autem omnibus casibus omittuntur verba *atque Beato N",* is explicit and makes no provision for custom; it is later than the decrees *S.R.C.* which recognized the insertion of the name of the local patron; accordingly the custom is no longer tolerated.[2] Others relying on the directions quoted in Q. 61 permit the insertion of whatever name is customary, particularly in the case of clerics not ascribed to any church.[3]

We are of the opinion that a lawful custom of naming the patron is not abolished by the directions of the rubric which states the common law. In many other points of liturgical law, much more important than this, we have frequently found the force of custom sustained against the written law. In any case, as the writers arc in disagreement, one is free to choose whatever solution is preferred, until the competent authority explicidy abolishes the custom.

### **586.—** Abrogated Suffrages

*What is tbe explanation of a statement which has appeared in the Catholic press to the effect that the national patron, St George, is always commemorated at Lauds on Sundays?*

*Lubricae G. nerales Breviarii,* XIV, 3 (ed. typica 1900): Commemorationes vero de Cruce, de sancta Maria, de sancto Joseph, de Apostolis, de Patrono et de Pace . . . dicuntur post orationem.

*Addit, et Variat ... ad normam Bullae "Divino Afflatu",* VII, 2 (1911): Deinceps, quando facienda erunt Suffragia Sanctorum, unum tantum fiet Suffragium juxta formulam propositam in Ordinario novi Psalterii.

Those who recited office before 1911 will remember the long scries of commemorations which had to be made on certain days according to the rubrics. Amongst them was that of the patron of the place or country, according to local usage; in England this was St George, and in some

[1] Amos iii, 3.
[2] *'Collât. Brugen.,* 1926, p. 345.
[3] * *Periodica,* 1933, p. 210.

dioceses the local patron as well, as contained in the English supplement of the breviaries current before 1911.

A notable reform introduced by *Divino Afflatu* was the substitution of one commemoration inclusive of all the saints mentioned in the older list, except that the titular of the church replaced the patron. In England, however, it was the rule for many dioceses to mention St George and not the titular of the church, a practice which was at variance with the common law. By a decree of 1 December, 1938, these variations were abrogated.[1]

The statement in the press may be referring to the rule existing before 1911, or to its modification in the years between 1911-1938, or even to a locality which, by induit, still continues the ancient practice. A summary explanation of the origin of these ancient commemorations may be read in Callewaert, *De Breviario Romano* (1939), p. 165.

## 587.—Office of Titular

*If the titular feast of a church is not in the Roman breviary or in tbe diocesan supplement, is it lawful to use the proper office approved and used in another diocese?*

*S.R.C.,* 16 April, 1886, n. 3661.1: Quid vero agendum si Titularis Officium minime repedatur in Breviario Romano? *Resp.* ... in casu desumendum officum ex Communi Sanctorum.

*Missale Romanum,* Decretum Approbationis, 25 July, 1920: Insuper praesenti editioni Missalis Romani adjectae sunt, ad modum Appendicis, Missae propriae pro aliquibus locis approbatae, quae in respectivis festis particularibus, vel in eorum sollemnitatibus externis, ubi ex Induito Sanctae Sedis concessum est, commode adhiberi poterunt.

Without criticizing the liberty allowed by many in choosing an alien office occasionally, out of devotion, die reply to the above query must be that the correct procedure is to use a common office when that of the titular is not in one's own breviary; for a title of Our Lady, in the same circumstances, the office of the Assumption should be used.[2]

The alternative is to seek an induit, which is easily granted, for the use of an office authorized in some other diocese. A number of these induits may be found in the *Decreta Authentica?* but we have not found any commentator who permits this to be done without an induit; they solve the doubt on the lines of n. 3661.4

## 588.—Form of Office

*A secular priest, with the permission of bis bishop, is staying at a Benedictine monastery for the purpose of teaching in a school, and lecturing in theology. He also does occasional duty as a supply in parishes and missions served by the monastery, and in secular parishes. When in the monastery he sometimes assists at tbe monastic office, substituting their office for the secular office on these occasions. May be adopt*

[1] Cf. *The Clergy Review,* 1939, XVII, p. 77.
[2] 10 March, 1787. n. 2529.
[3] E.g. 11 August, 1877, n. 3431, II, ii.
[4] *Collât. Bragen.,* 1947. P. 3°! *Irish Ecclesiastical Retord,* 1923, XXII, p. 648.

*the monastic office for those hours which he is obliged to say privately? Further, when be uses the secular office, should he follow the calendar of his diocese, or that of the monastery, or that of the diocese in which the monastery is situated?*

It is the ordinary teaching of the manualists that *devotionis causa,* two or three times a year, a priest may depart from the office which he is bound to recite and choose another. Apart from this concession, which needs no explaining, the question set may be solved by distinguishing between the form of office and the calendar followed.

(i) With regard to the form of the office, i.e. the breviary used, the principle is still that which was formulated by Pius V in his reform of the breviary, namely, that all are bound to use the Roman breviary except those churches and religious orders which had enjoyed their own approved breviary for two hundred years previously, that is to say, from before the year 1368. This decree is printed in the *Pars Hiemalis* of the present breviary.

The authors, nevertheless, used to teach quite commonly that secular clergy assisting in the choral office of a monastery could follow a form alien to their own breviary, since the public recitation of office is more solemn and devotional than its private recitation. This teaching can no longer be accepted. A direction, 5.R.C., 27 January, 1899, decided against it: "An satisfacit obligationi suae Clericus in Ordinibus Sacris constitutus, 3ui sponte vel invitatus se adiungit clero, Officium ab Officio ipsius clerici iversum canenti vel recitanti? *Resp.* Generaliter Negative."[1] The word "generaliter" allow's for the exceptions *devotionis causa* and, also, for cases where particular induits have been obtained.

In 1908 Abbot Hemptinnc of St Anselmo obtained an induit of this kind for priests attached to the service of any Benedictine monastery, but only for choral office: "S.R.C. utendo facultatibus sibi specialiter a Sanctissimo Domino Nostro Pio Papa X tributis, attentis expositis, benigne induisit, ut, ad proximum decennium, quicunque Presbyteri ad Coenobia monachorum Confoederationis Benedictinae quavis ex causa confluunt, in Choro tantum-modo, persolvere Horas Canonicas iuxta ritum rcspectivi Coenobii." The induit was for ten years; it is not contained in the *Decreta Authentica,* but it may be seen in *Periodica,* 1908, IV, p. 286; it is still referred to by the writers and we learn from Dom Steuart's *Benedictine Manual,* p. 106, that it has been extended. Similar induits exist for the tertiaries of other religious institutes, such as the Franciscans, or may easily be obtained by individuals, e.g. Dominican tertiaries, on applying to the major superiors of the order? A bcneficed priest is not, perhaps, included in these induits, since it has been repeatedly decided that he is bound to the office of his own church wherever he may happen to be living.[3] But, inasmuch as it is entirely a question of induit, no certain solution can be given except by consulting the text.

(ii) The question of what calendar should be followed is simpler. The priest, it appears, has a quasi-domicilc in the monastery, and it is more correct—even obligatory according to most writers—that he should follow the calendar of the place in which he is living[4] unless he has a benefice, in

[1] N. 4011.5.
[1] Cf. *I'Ami du Clergé,* 1951, p. 63.
[3] E.g. n. 2682, 46; 4194.8.
[4] Cf. Q. 590.

which case he must follow that of his own church. The calendar will be that of the monastery if he is entitled to use the monastic breviary. If he is using the Roman breviary, the simplest solution is that he should follow the diocesan calendar, since it is not certain that he is attached to the monastic church by any canonical title.1 On the other hand, induits often permit visitors in religious houses to follow the calendar of the religious institute.

### 589.—Office during Retreat

*A parish priest is away at the diocesan retreat for the feast of the titular of his parish church. May he say the office in common with his brethren, or is he bound to recite privately that of the titular?*

*S.R.C.*, 12 November, 1851, n. 2682.46: Quando quis, itineris vel studii vel aliis de causis, extra Patriam sive Dioccesim versetur, debet ne recitare Officium sui Capituli, Ecclesiae et Beneficii, vel etiam simpliciter dioecesis; an vero Officium illius loci in quo reperitur? *Resp.* Beneficiarii tenentur semper ad Officium propriae Ecclesiae; simplices vero sacerdotes conformari possunt cum Officio loci ubi morantur.

27 January, 1899, n. 4011.3: An satisfacit obligationi suae Clericus in Ordinibus Sacris constitutus, qui sponte vel invitatus sc adiungit Clero, Officium ab Officio ipsius Clerici diversum canenti vel recitanti? *Resp.* Generaliter Negative.

In principle it is certain that the parish priest, being a beneficed cleric, must recite, wherever he goes, the office proper to his own parish church. The writers permit, nevertheless, a departure from this rule, two or three times a year, *devotionis causa,* and the priest during a retreat could properly take advantage of this opinion for the purpose of reciting office publicly with his brethren. In monasteries an induit is often obtained permitting visiting priests to recite office publicly with the community; a similar induit could easily be obtained for the use of the clergy during a retreat.2

### 590.—Travellers and Divine Office

*What is the correct calendar to follow in the case of a priest who is living outside of his own diocese for a time for the purpose of study? Is it bis own diocesan calendar or that of the place in which he is dwelling?*

The rule is clear in the case of a priest who has a benefice. I le is bound to recite office according to the calendar of his own church, no matter where he may be or for what length of time.3

It is equally clear that if an unbeneficed cleric acquires a domicile outside of his own diocese, he is bound to follow the calendar of his domicile.4 If he is staying in no place long enough to acquire even a quasi-domicile it is agreed that he should recite the office of his own diocese.

1 Cf. n. 4043.1 and 2872.1.
» Cf. Q. 588.
* J.R.C., 12 November, 1831, n. 2682.46. Cf. also n. »599.2.
4 Cf. n. »445. *Prriodiea,* »923, XII, p. 29.

The only point remaining concerns the unbeneficed cleric who has a quasi-domicile. From canon 92, §2: "Quasi-domicilium acquiritur commoratione . . . quae vel coniuncta sit cum animo ibi manendi saltern ad maiorem anni partem, vel sit reapse protracta ad maiorem anni partem." From canon 15, §2, those who have a quasi-domicile in a territory are bound to observe the laws made for that place. The calendar is a species of liturgical law and, in our view, it should be followed by the non-beneficcd cleric with a quasi-domicile. This is the solution given by Pauwels in *Periodica,* 1923, XII, p. 30. It is certainly more correct to do so, and Prümmer considers that it is more probable that he is bound to: "Ratio est quia clerici quasi-domicilium habentes alicubi subduntur episcopo huius loci. Unde c.g. clericus maiorista, qui studii causa in aliqua Universitate degit per maiorem partem anni, Officium melius recitat iuxta calendarium dioecesis in qua sita est Universitas; et quidem statim a dic, quo pervenit ad Universitatem, quoniam etiam statim hac die acquirit quasi-domicilium, cum habeat animum permanendi in hoc loco per maiorem partem anni. Si talis clericus est sacerdos, adhuc alia ratio urget. Etenim in Missa dicenda tenetur se conformare calendario ecclesiae, ubi celebrat (paucis casibus exceptis). lamvero mens Ecclesiae est, ut Missa respondeat Officio divino recitato."[1]

But, owing to the practical difficulty of obtaining the proper of a place in which one is not dwelling permanently, and also owing to the latitude permitted in the direction given by *S.R.C.,* n. 2682 (conformari *possunt* cum Officio loci), a strict obligation cannot be established, and the writers on the subject decide that a cleric in these circumstances may follow the local calendar or that of his own diocese, as he pleases.[2]

Occasionally it will be found that the point is ruled by induit. For example, in certain seminaries the students arc bound by a particular law to follow the calendar of the religious institute which is in charge of the seminary.

## 591.—Choice of Office

*The opinion may be safely followed which permits a priest, two or three times a year, to recite privately another office "devotionis causa" if it is not notably shorter. Is this liberty restricted to the choice of an office from one's own breviary?*

(i) It is to be restricted, in our opinion, to the choice of an office from one's own breviary. This seems a necessary conclusion from such texts as that in *Divino Afflattr.* "Sciant se tarn gravi non satisfacturos officio, nisi nostrum hunc Psalterii ordinem adhibeant" and from equivalent phrases in the Bull prefixed to the breviary of Pius V. Hence a priest may not, on the one hand, recite office from a different breviary even only once in the year; on the other hand, by way of compensation, he is not bound to make use of a different breviary if he cannot procure his own.

(ii) The above is the common law, but with an induit many departures from it are possible. Thus nearly every Benedictine monastery has an

[1] W. *Moral.,* II, §369.

[2] Cf. Tummolo-Iorio, II, n. 59; Callewacrt, *De Breviarii Romani Li/urgia,* p. 283

induit permitting secular priests visiting the monastery to fulfil their obligation by reciting the monastic office in choir with the monks. The private recitation of the monastic office out of devotion two or three times a year, e.g. on the feast of St Benedict, is not, we think, included in the liberty of choice discussed in (i). An induit would have to be obtained *for* this purpose, and it may well be that pricst-oblates in certain places obtain from their status the right or the obligation of using the monastic breviary.

*Is it permitted to recite the ferial office throughout the whole of Lent, or on those days, at leasty when a ferial Mass is permitted? May the lawfulness of so doing be deducedfrom the teaching of St Alphonsus on the subject?*

The principle *officium pro officio valet* has its chief value when one has inadvertently recited the wrong office. Deliberately to choose one which is not according to the lawful calendar is sanctioned by all the manualists provided that the substituted office is not notably shorter, that there is a reasonable cause—e.g. devotion to one's patron saint—and that it is done rarely—i.c. two or three times a year. There can be no dispute that this is the teaching of the modern authors, and the only question is to examine whether they arc too rigid in this judgement.

We can find nothing in St Alphonsus which supports the view of our correspondent, unless it be, perhaps, that he held this view at one period of his life when he sanctioned many things which were later deleted as not "probable". In the Gaudc edition, Lib. IV, n. i6r, q. 3, four views are noted: (1) The substance of the obligation is fulfilled by reciting a complete office, even when it is notably shorter: *hisce (auctoribus} olim adhaesi. Sed nunc verius censeo cum ~R.oncaglia eam sustineri non posse; quia cum recitatur officium notabiliter brevius, tum illud non impletur neque in eius forma neque in substantia aequivalenti.* (2) There is no grave sin in changing an office for one which is of practically the same length. (3) It is a grave sin to change the office to one of equivalent length, even once. (4) To change the office frequently is a grave sin; to do so three or four times a year is venial sin, provided the office is not notably shorter. On these four views St Alphonsus makes the following judgement: *Ex his sententiis (ut meum proferam judicium} prima, pace tantorum doctorum qui cam tuentur, vix (ut dixi} sustineri potest; secunda et tertia satis probabiles videntur; sed quartam aequiorem puto.*

If it can be established that the ferial office may be lawfully said throughout Lent, no one would be more pleased than the present writer. It is not, as a matter of fact, notably shorter, considering the length of the psalms in *Lauds* and the *preces* throughout; the practice would sustain the principle of Mass and office agreeing in those cases where the priest elects to say a ferial Mass; it is simpler to say and, therefore, an aid to devotion. But we think it cannot be established. The consensus of the modern authors is based on the canonical nature of the prayer of the breviary; being public, even when recited alone, it should be uniform in a given locality or group; there is an obligation to recite it daily, whereas there is no obligation to say Mass daily; therefore, all the commentators proceed on the principle that the form imposed by law is part of the obligation, and not merely the quantity of what is recited. If this rule is deliberately broken, we think, considering the variety of opinion, that it could not exceed venial sin.

*May a priest say the office each year of his patron saint, who is in the martyrology but not in the calendar, faking the text of Mass and office from the common?*

(i) Provided he observes the usual liturgical rules about votive Masses, he is not forbidden to say the common as a votive Mass. It is expressly permitted in the rubrics at the end of the first series of votive Masses in our current missal: "Item dici possunt Missae votivae ... de omnibus canonizatis, in Martyrologio Romano descriptis, pro quibus Missa sumitur, sive propria, si habeatur, sive de Communi, mutatis mutandis, ut in Proprio Sanctorum assignatur. Quod si in Kalcndario non inscribantur, omnia dicuntur de Communi, ad libitum sacerdotis."

(ii) The rubrics of the breviary do not permit a choice of office on certain days. The form in which it is recited must be that which corresponds to the breviary and the calendar to which the priest is bound. Nevertheless writers permit, two or three times a year, an alien office to be recited by a priest *devotionis causa,* provided it is not notably shorter than the proper office, and this opinion may safely be followed.

## 592.— Breviary Lacking

*A regular priest, who dwells outside his own diocese on a special mission, for which he has received the necessary faculties {connected with his particular work) from the bishop of the scene of his work, has lost his breviary. Told to get a spare copy from a secular priest working in the same area, he refuses io do so on the ground that his own office differs considerably from the secular office. So he holds himself excused from saying the office for a whole week. The question is whether a regular priest is in conscience bound to say the office of a secular priest in such a case, or is he free to say no office at all, quite apart from the faculty {not included in those given him) to substitute other prayers for the office in certain cases? It may be added that recourse to the local Ordinary would have been quite easy.*

Pius X, *Divino Affiatir.* Sciant sc tam gravi non satisfacturos officio, nisi nostrum hunc Psalterii ordinem adhibeant.

Innocent XI, *Propositio Damnata,* Dcnz., 1202: Qui non potest recitare Matutinum et Laudes, potest autem reliquas horas, ad nihil tenetur; quia maior pars trahit ad se minorem.

The sentence from *Divino Afflatu* is held to support the probable opinion, current before the reform of the psalter, that a priest who is bound to recite the Roman breviary in the form edited by Pius V is excused altogether on the score of not having a breviary, even though other breviaries, e.g. the monastic one, arc easily obtainable; "qui carens suo breviario Romano aliud ad manum habet, non teneri iuxta istud recitare, quamvis non pauca forte in utroque concordent".1 The same opinion may be followed by one bound to the monastic breviary when the Roman book is easily available, unless something contrary is contained in the constitutions. St Alphonsus, *Theologia Moralis,* IV, η. 158, and many of the older authors were more strict, holding that if one could obtain a notable part from an alien breviary, e.g. the psalms

1 Dignant, *De Virtute Religioni/,* 1920, §83.

but not the lessons and rcsponsories, it was of obligation to recite what was possible. But the milder view is now taught by most modern authors, e.g. Tummolo-Iorio, II (cd. 1938), §1108; Ferreros, II, §105.

It would appear, at first sight, that this view is not compatible with the ruling of Innocent XI on the condemned proposition. It must be noted, however, that the principle on which the milder view rests is that the *form* of the office prescribed is substantial to it, that one's obligation is to recite it in this form, and that a substituted form docs not fulfil the obligation. The teaching of the condemned proposition, on the other hand, is concerned not with the form but with the separate parts or hours within it. Each of the offices or hours of the breviary are individually of obligation, and one is bound, without any possibility of evasion by relying on the milder view recorded above, to recite those separate parts or units which can easily be obtained either from an alien breviary or from any other source. This is the interpretation of all the modern authors we have consulted who hold the milder view, e.g. "Nec obstat supra allata prop. 45 ab Innoc. XI damnata, quia in illa agitur de eo qui horas *integras* absolvere potest".[1] "Ideo qui carens breviario novem psalmos pro Matutino cuiusdem festi assignatos ex Bibliis dicere posset, sed antiphonas, lectiones, responsoria nesciret, probabiliter non obligatur ad illos recitandos: et contra, si Primam, paucis omissis, memoriter teneret, ad hanc recitandam obligaretur. In altero iam casu, qui aliquam officii horam, etiam parvam, recitare potest, ad illam tenetur."[2] It follows with equal certainty that if, with the aid of one's memory, the use of an alien breviary makes it possible to recite certain complete hours in accordance with one's own book, it is of obligation to do so.[3]

This solution, which we hold to be certain, is still more apparent in the case of a regular whose breviary is that of Pius V, and many modern orders do use, as a matter of fact, the Roman breviary of Pius V, with some accidental modifications which differentiate it from the book used by the secular clergy. The reform of this pope permitted only those churches and monasteries which for 200 years previously had enjoyed their own form to retain it. Amongst the great family of clerics, secular or regular, who use the Roman breviary, the differences and modifications are chiefly those arising from the calendar or the offices proper to particular groups, and lacking the proper office one is bound to recite at least the common or the nearest thing to it: "Si deest officium recitandum, suppetit vero aliud ex Breviario Romano, istud recitandum est. Nam habetur obligatio virtualiter duplex: altera cotidie recitanti officium ex isto Breviario, altera recitandi officium calendario designatum. Si huic posteriori satisfieri nequit, manet tamen implenda prior obligatio."[4] The regular priest is, therefore, bound to say office, in these circumstances, from a breviary borrowed from a secular priest, choosing as far as possible what corresponds to his own.

[1] Tummolo-Iorio, *toe. cit.*
[2] Dignant, *op. cit.*, §119·
[3] *Ibid.*, §82, n. 4.
[4] Génicot, *Theol. Mora!.*, II, §51, ad vii.

### 593.—Office Morally Impossible

*A priest finds himself subjected throughout the whole day to an unusual din of traffic which makes it impossible for him to give to the office the requisite degree of attention. Is he, nevertheless, bound io its recitation in these circumstances?*

The point in this query is not whether the office can be said well under these conditions, but whether it can be said at all owing to the lack of necessary attention. If the answer is that the office is not being said, and cannot be said, with the minimum of attention necessary, it must follow that the priest is not bound to fulfil the obligation.

In defining the kind of attention required, if the substance of a public and official prayer is to be preserved, the writers are in agreement that it must be the kind which is called external, by which is meant that the person praying must not be engaged, at the same time, in performing some external action which is incompatible with that of praying. Even though this external attention is present, the action of praying may be badly and even sinfully performed owing to culpable distractions; but the opinion is at least solidly probable that the lack of internal attention does not destroy the substance of the act. Therefore, in our view, a priest in the above circumstances is not excused solely because internal attention is impossible.

But a better and a simpler solution of the difficulty may be found, perhaps, by using the principle that one may be excused from this obligation owing to the moral impossibility of performing it. It is physically possible, indeed, but attended by such great difficulty that the positive law is held not to bind. All moral impossibility is relative to the person affected and must be decided by his conscience: it is always recommended in such cases that one should seek the sanction of a superior or of a confessor. Personally we would not recognize any moral impossibility in a situation such as that described, unless the priest's nervous reactions to noise were so abnormal as to be equivalent to the kind of illness which may excuse one from reciting the office on that ground.1

### 594.—Office in the Vernacular

*In view of the recent publication of an English version of the Breviarium* Romanum *of the Universal Church, how far is it permissible for priests, in the recitation of the divine office, to use this English breviary? Would priests be free to read their office from the English version so as to make themselves familiar with the proper and correct meaning of the various psalms, hymns, noctums, etc. ?*

From canon 135 clerics in major orders arc bound to recite the divine office "secundum proprios et probatos liturgicos libros". This includes the obligation to recite it in Latin since the approval is for the Latin edition, and all the commentators are agreed that the Latin tongue belongs to the substance of the obligation; the obligation is not fulfilled by reciting the office in a vernacular translation.

1 Cf. Prümmcr, *Theol. Moralis,* II, §35J.

Iorio cites *S.R.C.,* } June, 1904,l for an explicit confirmation of this teaching. The decree is not in *Decreta Authentica* but it is given in some private collections. The answer given to the Bishop of Trieste was: "Qui ad recitationem divini officii et cuiuscunquc partis Breviarii Romani sunt obligati, tantum in lingua Latina haec recitare debent; alias non satisfaciunt obligationi."2

One would need an induit in order to use the vernacular, or any other language except Latin. Bishop Ward mentions that Dr Kirk of Lichfield enjoyed permission from the Moly See to recite the breviary psalms in Hebrew, that he might keep up his knowledge of that tongue.3

## 595.—Rosary for Office

IFZw/ *has become of the permission to substitute the rosary instead of the office whenever, owing to pressure of work, the office cannot be said? The diocesan faculties "pagella" used to contain the permission but does so no longer.*

Ordinaries have no power to dispense from reciting the divine office except in the circumstances of canon 81, namely: "nisi haec potestas eisdem fuerit explicite vel implicite concessa, aut nisi difficilis sit recursus ad Sanctam Sedem et simul in mora sit periculum gravis damni". A limited power, not of dispensing, but of commuting the obligation to reciting the rosary, is frequently given by the Holy Sec, and is included in the formula of faculties which the *Propaganda* has been accustomed to issue to Ordinaries in missionary districts: "n. 42: Concedendi ut ob legitimam gravemque rationem, de qua cius conscientia oneratur, loco divini officii, rosarium vel aliae preces recitari possint."4 To a question as to what was to be understood by "rosarium" the Holy Office replied, 2 July, 1884: "Intelligi integrum rosarium, sed relinqui prudenti arbitrio et conscientiae episcopi, attentis peculiaribus personarum adiunctis, commutationem in tertiam partem et in preces tertiae parti respondentes." Some Ordinaries communicated the faculty to their priests in the following sense: the office was divided into three parts—(1) Matins and Lauds (2) Litdc Hours, (5) Vespers and Compline; a third part of the rosary, i.e. five decades, represented each third part of the office for those who were lawfully prevented from reciting that part. It is obviously a source of scrupulosity which, in certain places, is remedied by more precise instructions from the Ordinary. Thus, in America, when the faculty was in use, the bishops obtained an Apostolic induit declaring that all priests who heard confessions for five hours could commute Matins and Lauds into the recital of the rosary.5

In England, up to the promulgation of the Code, this power of commutation appears to have been included in the quinquennial faculties granted to Ordinaries. But it is no longer found in the ordinary formula III issued by the *Sacred Consistorial Congregation.* It used to be communicated to the

1 *Tbeol. Moratis,* II, n. 59.
* Hébert, *Liturgie,* I, p. 42.
3 *Eve of Catholic Emancipation,* III, p. 282.
4 Vromant, *Facultates Apostolicae,* 1926, η. io8; Vermcersch, *Periodica,* 1922, XI, p. 125.
• *Ecclesiastical Review,* 1909, XL, p. 499.

clergy in the diocesan *pagella* of faculties. Thus the Westminster *pagella* up to the year 1918 contained it, under η. XI: "Recitandi integrum Rosarium, si ob aliquod impedimentum legitimum Divinum Officium recitare non valeas." When the Code appeared a sheet of corrections was issued with this *pagella* directing that η. XI was to be omitted, and in subsequent reprints of the *pagella* no mention was made of this faculty.

Accordingly, in the absence of a faculty for commuting the office into a recital of the rosary, a priest who is excused from the canonical obligation because of physical or moral impossibility, is not bound to say other prayers in place of the office, though it is usual and praiseworthy to do so. "The substitution of three rosaries or one rosary for the divine office is not valid apart from privilege. If a priest is exempt from office on a given day, it is usual for him to recite a rosary in place of the office, though he is not obliged to do so."[1] "Qui a recitatione officii legitime est excusatus ob impotentiam physicam aut moralem, non tenetur loco Officii alias preces dicere; quia talis commutatio nullibi praescribitur. Nihilominus laudabiliter recitat alias preces clericus impeditus quominus Officium dicat; ita enim ostendit bonam suam voluntatem satisfaciendi praecepto orandi ab Ecclesia ipsi specialiter imposito."[2] In the case of a priest who is likely to be prevented habitually, because of moral impossibility, the proper course is for him to petition his Ordinary for a dispensation or commutation.

### 596.—Wireless and Liturgical Offices

*Is there not an instruction of the Holy See forbidding liturgical services on the wireless? If so what is now the position seeing that such services have been broadcast from St Peter's?*

There has not been, so far as we know, any Roman prohibition promulgated in the *Acta Apostolicae Sedis* and, therefore, binding on the whole Church. The German bishops assembled at Fulda in 1927 decided that, until further instructions were given, the divine offices were not to be broadcast. It would appear that the bishops were acting on instructions received from Rome, since the Holy Office, answering in 1928 a question from the Archbishop of Prague, gave a decision which referred to a previous one in 1927. The text of this later document was printed in some of the journals in the vernacular: "Is it permitted to broadcast by wireless the liturgical chants ot the Mass or of other religious functions, cither entirely or in part, with the exception, of course, of those chants sung by the celebrant or by the ministers? To this question, submitted by the Archbishop of Prague, the Holy Office gave the following answer: the decision given on 26 January, 1927, remains in force: 'Non expedire'. If churches in other parts of the world permit broadcasting of the liturgical chants of the Mass, the Holy Office expressly declares that it is an abuse and that it is done without the consent of the Holy See."[3]

1 Davis, *Moral Theology** IV, p. 296.
3 Prùtnmcr, *Theol. Moratis** II, §578.
3 *Documentation Catholique*, 1929, p- 862.

It will be noticed that the adverse decision was not very severe—merely that such wireless transmissions were not expedient, that the Sacred Congregation considered the practice an abuse, and that no permission had been given.

The decision was given many years ago, when, perhaps, owing to the novelty of such transmissions, ecclesiastical authority had to be very guarded about them. Whatever the force of the document may be, everyone is aware of the broadcasts from St Peter's of the liturgical rites surrounding the obsequies of Pius XI and the coronation of Pius XII; also of broadcasts from Westminster Cathedral. The conclusion can only be that it is no longer considered inexpedient or, alternatively, that permission can easily be obtained for the broadcasting of liturgical functions from churches.

### 597.—Exposition and Office of the Dead

*In a convent of perpetual adoration there is daily exposition of the Blessed Sacrament, and the nuns who are bound to the divine office recite it in the presence of the Blessed Sacrament. But when they have to say the office of the dead they retire to the chapter room, or to some other room, if the chapter room is not available. Some of the nuns now ask: Why retire at all? In a convent of perpetual adoration where there is daily exposition, which cannot easily be suspended, is it lawful to recite the office of the dead in the presence of the Blessed Sacrament exposed?*

*S.R.C.,* 8 February, 1879, n. 3479.2: Num, durante expositione Augustissimi Sacramenti, Officium pro Defunctis recitari vel cantari liceat in Choro? *Resp.* Negative.

The Church has always considered public exposition of the Blessed Sacrament incompatible with the office of the dead, provision being made for All Souls' Day, if it coincides with the XL Hours exposition.[1] Doubtless, those communities which have perpetual exposition of the Blessed Sacrament have special regulations.

Amongst the directions of *S.R.C.* is the answer given 15 July, 1885, n. 3582.4, which forbids Vespers of the Dead, during the octave of All Souls, even when the Blessed Sacrament is covered with a veil. "In Ecclesiis Matrice et Collegiata loci *Ratigliano* nuncupati, iampridem in octiduo fidelium Defunctorum et per triduum post Dominicas Septuagesimae et Sexagesimae, ex quodam legato, post Completorium exponi solet SSmum Sacramentum a Sacerdote pluviali albo induto: et post cantum Hymnum *Pange Lingua* et factam thurificationem velo cooperitur SSmum Sacramentum. Tunc a Sacerdote assumitur pluviale nigri coloris et Defunctorum Vesperae decantantur; ac post absolutionem tumuli cum cantu *Ubera Me Domine,* rursus sacerdos induit pluviale albi coloris, et detegitur SSmum Sacramentum. Quo demum, post cantum *Tantum Ergo* benedictio fidelibus impertitur. Quaeritur num liceat huiusmodi praxim servare? *Resp.* Affirmative; dummodo SSmi Sacramenti expositio fiat absoluto Defunctorum Officio, ac remoto, si fieri potest, tumulo; vel saltem cxtinctis candelis circam illum accensis."

[1] *Clementine Instruction,* §xvii.

## §3. HOLY WEEK

### 598.—Ceremonies of "Memoriale Rituum"

*If the ceremonies are performed as authorised in the "Memoriale Rdtuum" of Benedict XIII, is it correct to sing certain portions, e.g. the "Exaltet", even though the "Memoriale" directs them to be recited?*

*May the same ceremonies be attempted without the three servers prescribed?*

(i) The current typical edition of the *Memoriale Rituum*[1] provides for the singing of certain portions throughout. The previous book made no such provision and J'.R.C., 13 September, 1879, n. 3505.6, gave a decided negative to a question which requested permission to sing certain portions where such custom existed. This rule of n. 3505.6 is now clearly obsolete, and one may follow the guidance of the current *Memoriale* which permits the singing of the *Exultet* by the celebrant as well as the singing of chants throughout the week.

It could be maintained, indeed, even before the current *Memoriale* appeared, and notwithstanding the direction of n. 3505.6, that certain portions might be sung if desired, and a strong plea justifying this practice is found in Fortescue's *Ceremonies of the Roman Rite Described* (1920), p. 263. Commentators who have written since the appearance of the new *Memoriale* simply introduce the new rules into their description of the rites, as Fortescue-O'Conncll, *Ceremonies of the Roman Rite Described* (1943), p. 253. The First Westminster Provincial Council, Dec. xviii, n. 19, ordered in England the use of the *Memoriale,* which was originally produced for the smaller churches of Rome.

(ii) The *Memoriale* is itself a text in which the ceremonies are reduced to the minimum, and it prescribes a minimum of three servers. It would be a fearsome undertaking to attempt these rites with less than three, and although we do not know of any express prohibition, we think it would be wrong to make the attempt. In convent chapels the use of the *Memoriale* is permitted by induit, which most Ordinaries have the power to grant from their quinquennial faculties, provided they are satisfied that the ceremonies will be carried out with due reverence: it is unlikely that an induit would be granted unless the minimum number of servers is available.

### 599.—Indult for Using "Memoriale Rituum"

*Is it allowed to celebrate the solemn ceremonies of Holy Week in the chapels or oratories of communities of nuns—moniales—who are bound to the recitation of the divine office in choir, without having previously obtained from Rome the special faculties usually granted to religious sisterhoods—sorores—who have no obligation to the choir-office? In other words: Does not the above obligation create the duty of performing such ceremonies as part and parcel of the divine office?*

[1] Eng. tr. by Rev. L. Clark. (Burns Oates, 1926.)

(i) The observance of the full ceremonial for the last three days of Holy Week, according to the rubrics of the Roman missal, requires no special indult for the chapels of religious, whether strictly *moniales* or not. One author we have consulted states that it may be done "consentiente Ordinario",1 but we think that no more can be intended by this phrase beyond that consent of the Ordinary which is required for the celebration of Mass at any time of the year. It must be observed, however, that the rites as contained in the Roman missal apply only to a solemn Mass and accompanying offices during this *triduum,* that is to say, the observance of the rubrics requires deacon and subdeacon and all the other accompaniments of a solemn Mass. Therefore, the rubric at the end of the Mass of Wednesday in Holy Week reads: "Triduo sequenti prohibentur omnes Missae privatae", and *private* in this context certainly means low Mass, *Missa lecta.*

The only concession that may be granted in these chapels is permission to omit the offices and Mass of Holy Saturday: "In aliis ecclesiis non-parochialibus, omitti potest functio Sabbati Sancti, non tamen illa Feriae VI in Parasceve; et fiat sepulchrum: expetita facultate pro usu dicti *Memorialis,* si idem sacrorum ministrorum ct clericorum defectus existât."2

(ii) If it is desired to follow, in non-parochial churches, the *Memoriale Utituum* of Benedict XIII, according to which all the offices may be performed by one priest with three assistant servers, an indult is required at least for the *tricinum.* This is implied in T.R.C., n. 4049: "expetita facultate", and is contained more explicitly in an earlier reply, n. 3590, with regard to the use of the *Memoriale* in non-parochial churches: "Pro gratia, iuxta modum; nimirum ut petita facultas concedatur solummodo Oratoriis sive publicis sive privatis Monialium sub clausurae lege viventium, et aliis Oratoriis sive Ecclesiis publicis pro locorum necessitate sive magna utilitate, iuxta prudens Rmi D. Ordinarii pro tempore arbitrium." Accordingly, the power to grant the use of the *Memoriale* in such chapels is contained amongst the various faculties granted by the Holy Sec to Ordinaries and other prelates. It is included, for example, in the *Quinquennial Faculties of* American bishops, with the proviso that the Ordinary is certain that the ceremonies will be carried out with due reverence. It is contained also in the *Facultates Apostolicae* granted to Missionary countries, η. IX.3

(iii) Many chapels of religious communities obtain an indult for a low Mass on Holy Thursday and Holy Saturday, that is to say, a Mass without any of the ceremonies proper to the last three days of Holy Week; others obtain the privilege for a low Mass preceding the solemn offices on Holy Thursday. There has never, we think, been any misunderstanding about the necessity of an indult for these Masses, but it is quite certain that an indult, easily obtainable, is also required for the use of the *Memoriale Rafuum* at these Masses in all churches and chapels other than parish churches. The circumstance of the choir offices being habitually performed or not is scarcely relevant to the question, except that it would influence, no doubt, the grant of an indult to use the *Memorialed*

(iv) The strict rigour of this rule is not, it appears, to be applied to the

1 Vromant, *Facultates Apostolicae,* n. 43.
*l S.R.C.,* n. 4049.
3 Bouscarcn, *Divert,* IT, p. ij: Vromant, *I'acultates Apostolicae,* p. 38.
*Cf. Creuscn, *Religieux and Religieuses* (193°)» η· Croegaert, *Caerimoniale, Π,* (1935), P· 420·

ceremonies in this book other than those of the last three days of Holy Week. This is expressly conceded for Ash Wednesday in n. 4397.4, and many commentators allow the same for the other ceremonies therein.[1]*

On the other hand, that an induit is required in oratories for any of the ceremonies in this book, and not merely for those of the *triduum,* seems implied by the fact that many formulae of faculties granted to Ordinaries include that of permitting the use of the book in these places on Ash Wednesday, Candlemas and Palm Sunday.[2] The explanation may be that the formula in such faculties is considerably antecedent to the relaxation permitted in 1925. In any case, the teaching of the commentators may be safely followed, unless the local Ordinary expressly requires an induit to be obtained.

*Periodica,* 1925, p. 57, gives the following explanation of "ex gratia" in n. 4397: "Observes verba *ex gratia* non referri ad Memoriale Rituum Benedicti XIII, sed ad ipsum *S.R.C.* responsum quod fit affirmativum *ex gratia.* Sententia igitur sic exponenda est: ex gratia conceditur; fiat autem benedictio cinerum iuxta *Memoriale Rituum* Benedicti XIII."

### 600.—Palm Sunday Procession

*Being recently appointed to a small parish, I am informed that it has not been customary to have the procession on Palm Sunday; the palms having been blessed with the form in the missal and distributed to the people, Mass follows immediately. Is this permissible? Also, may the palms be blessed by a priest other than the celebrant of the Mass?*

(i) In the common law, from S.R.C., n. 5813.1, the ceremony of blessing the palms is of obligation only in cathedral and collegiate churches; in other churches it is permissible, and small parish churches may use the *Memoriale Rituum.*

Custom or local law may make this ceremony obligatory, at least as in the *Memoriale Rituum,* even in small parish churches. *I Westm.,* xviii, 19, seems to make the use of this book obligatory for the *triduum* of Moly Week, and in many diocesan calendars it is expressly so stated for Palm Sunday. Assuming that the blessing of palms is of obligation in a small parish church, it seems to us that the rite must be carried out as prescribed in the book without any mutilation: only three servers arc strictly required, no singing is necessary, the time required for the procession is not very long, and we cannot discern any reason justifying an omission of any part of the rite. The only possible justification for omitting the procession, except during the XL I lours, might be a contrary custom, which is held to exist in some places, as in Ireland, and which competent observers regard as a regrettable defect.[3]

(ii) If the blessing is not obligatory but merely permissible as in convent chapels, there is sufficient authority for omitting the procession. The formula of blessing then recommended, as directed in n. 3565 "extra tempus

1 Cf. Fortcscuc-O'Conncll, *op. àt.,* p. 255; *Iλ Maison-Dieu,* Cahier 4, p. 169.
1 Cf. Formula IV for U.S.A, in Bcste, *Introductio,* p. icon
1 Cf. *Irish Ecclesiastical Record,* 1924, XXIV, p. 419, ad iü,

Paschale", is the "Benedictio ad omnia" of the Ritual; or the prayer "Petimus, Domine" in the Palm Sunday rite of the missal, as Fr Battistini sanctions.[1] Our own preference is for the "Benedictio ad omnia" formula in these circumstances, because the principle of not mutilating liturgical rites is thereby preserved.

But with an induit, of course, everything is possible. The faculties given by the Holy Sec to army chaplains permit them to bless the palms on Palm Sunday with an abbreviated rite consisting of the missal prayers "Petimus", "Deus qui dispersa", "Deus qui per olivae ramum" and the concluding "Omnipotens". The fact that this concession is granted by induit, for special reasons, supports the principle we have maintained that a mutilation of this liturgical rite is not otherwise permissible.

(iii) From n. 2783.2 the blessing of palms, as in the missal or the *Memoriale R.ituiimy* must always be performed by the celebrant of the Mass. Bishops alone, exclusive of titular bishops from n. 3798.2, have the privilege of blessing palms, candles, ashes, and also of giving the Requiem absolution, without celebrating the Mass which accompanies these functions.

## 601.— Passion: Dispensation Tax

*Diocesan instructions are*: IP7/Λ *the permission of the Ordinary, priests duplicating on Palm Sunday may omit in one Mass the earlier part of the Passion—the customary tax of* 5j. *is imposed by the Roman Congregation. The dispensation appears to come necessarily or automatically with the request and sending of the tax. Would you explain the purpose and reasonableness of such procedure?*

Certain dioceses have obtained the induit *ad quinquennium* to be used by all priests who are duplicating *servatis serrandis}* in other dioceses individual priests who desire the induit have to apply for it. It is not granted automatically to anyone who wants it but only to those who are duplicating.

The payment of a tax, on the occasion of a dispensation being granted by the Holy Sec, is not peculiar to this matter but is common to all dispensations for the external forum. Dispensations granted by the *Sacred Penitentiary* for the internal forum arc excepted.[2] Also, from canon io$6, local Ordinaries may not impose any tax, on the occasion of granting matrimonial dispensations, beyond a small sum for curial expenses, unless express permission has been obtained from the Holy Sec. The purpose and reasonableness of a tax is evident from the wording of this canon, namely, it is to defray the expenses of the Roman offices and officials. But it is manifest in the case of dispensations from matrimonial impediments, and the same applies to all dispensations, that a sum over and above these expenses is payable on the title of a fine, a composition, "componenda", for the non-observance of a law or obligation. The money obtained is devoted to religious and charitable purposes. These taxes may be remitted because of poverty and other just causes.

[1] *Ephemerides Liturgicae,* 1926, p. 258.
[1] *A.A.S.,* 1909,1, p. 102, *Normae Petuliores.*

## 602.—Reservation during Triduum

*Assuming that one must reserve the Blessed Sacrament for the sick, what is the correct place for so doing in chapels which have only one tabernacle suitably constructed for reserving the ciborium, namely that on the main altar? Some maintain that, if this tabernacle is used, the chapel must be closed until after the Mass on Holy Saturday.*

*S.C. Sacram.,* 26 March, 1929, *A.A.S.,* XXI, 631. Ill, *b.:* Pro Communione infirmis danda, in Ecclesiis parochialibus, aliisque, a quibus accipi solet Sanctissima Eucharistia, servandae sunt aliquae particulae consecratae in pyxide, circa cujus repositionem haec serventur. Juxta mentem Rubricarum ista extra Ecclesiam esset reponenda, sc. prope Sacristiam, in loco opportuno et apto, ubi congrua cum reverentia adservandum erit Sacramentum, non tamen fidelium adorationi expositum, sed tantum communionem infirmis ministrandi causa custoditum. Hujusmodi locus opportunus et aptus est capella, seu sacellum prope Ecclesiam, vel ipsum sacrarium, aut aliquod parvum conclave sacrarii tutum et decens; aut etiam locus decens in parochiali domo, a domesticis et profanis usibus sejunctus, et a quocumque irreverentiae periculo remotus. Ibi parandum est tabernaculum clave obserandum, lampade coram eodem jugiter ardente, et repositio ipsa Feria V facienda est.

Ubi vero hujusmodi aptus locus non habeatur, sacra pyxis adservanda erit a Missa Feriae V ad Missam Praesanctificatorum ipso in "Sepulcro", uti communiter appellatur, post calicem; a celebrata autem Missa Praesanctificatorum ad Missam Sabbati Sancti, in aliqua remotiore et secretiore capella ecclesiae, ibique lampas accensa maneat. Si autem nullus, praeter "sepulcri" sacellum, locus aptus habeatur, pyxis in ipso sepulcro, usque ad Sabbatum Sanctum remaneat. Lampas ante Sepulcrum accendatur, extinctis ceteris luminibus, iis etiam sublatis, quae ad ipsius ornatum fuerunt apposita. Quod si in aliqua ecclesia Coenac Domini solemnia non habeantur, sacra pyxis suo in altari servari poterit usque ad solis occasum ejusdem Feriae V; posthac usque ad Sabbatum Sanctum, in aliquem ex supra indicatis locis erit collocanda.

Prudentiae ceteroquin Episcoporum erit, quoties enascatur difficultas in harum praescriptionum observantia, quacnam sint aptiora loca ex enunciatis ad cumdem finem, dijudicare, et si non parvi super eadem re irrepserint abusus, ut sedulo isti removeantur, curare.

The directions given in the instruction of 1929 repeat, with more detail, the rubrics contained in the new edition (1921) of the *Memoriale Rituum,* IV, ii, §3, 4, and V, ii, §5, 1,[1] and they replace any earlier instructions found in ritual books.

The obvious comment one has to make on the difficulty set out in the above question is that an institution which has the privilege of reserving the Blessed Sacrament throughout the year should also have everything essential for observing the law during the last three days of Holy Week. It should have another receptacle for the Blessed Sacrament, constructed according to

[1] The English version of V, ii, §5, 1, should read, more correctly, "to this place" instead of "from here": "secus huc asportata esset eodem die".

the rules summarized in *S.C. Sacram.,* 26 May, 1938, which may serve for the custody of the Blessed Sacrament at this season. The instruction offers many alternatives including the sacristy and, if there is absolutely no other suitable place, the chapel used for the altar ot repose.

If the institution, as is likely, does not observe the ceremonies of Holy Week, the above directions are nevertheless to be observed: the Blessed Sacrament may remain till sunset on Holy Thursday in the tabernacle of the main altar, and should then be removed.

The decree itself leaves it to the Ordinary to make any further directions which may be required. It seems to us an unusual procedure to close the chapel on one of the most sacred days of the year, but this may be the Ordinary's decision; or, what is more likely, he may direct that the Blessed Sacrament should not be reserved, if there is no suitable provision; he may also tolerate the use of the tabernacle of the main altar, whilst the faithful use the chapel for the Stations and other religious exercises: the sanctuary could be veiled off so as to exclude public veneration of the Holy Eucharist.

T/tf *altar of repose may be used for reserving tbe Blessed Sacrament for tbe sick, from tbe Mass of the Presanctified till after Mass on Holy Saturday. Does this apply ,0 "urn" which is often not fixed to tbe altar, and in other respects does not always comply with the regulation regarding the receptacle in which tbe Blessed Sacrament is reserved?*

The "urn" used at the altar of repose need not comply with the regulations for reserving the Blessed Sacrament, which are made on the supposition that the Blessed Sacrament is being unattended by watchers or worshippers. From the end of the Mass on Holy Thursday till the Mass of the Presanctified, the law assumes that there will be a succession of worshippers throughout the whole period. It is as though exposition were taking place.

If, however, for the period from the Mass of the Presanctified till Saturday morning, the Blessed Sacrament is left unattended at the altar of repose, the receptacle must conform to the law explained by J. *C. Sacram.,* 26 May, 1938; it must be strongly constructed, fixed to the altar, and securely locked. The fact that the period is only twenty-four hours is no reason for disregarding the law on so grave a matter. Similarly, if there arc no watchers throughout the night of Holy Thursday, and if the "urn" does not comply with the law, the Blessed Sacrament should be removed, after the church is closed, to the main altar tabernacle, and replaced on the altar of repose before the church is opened on Friday morning.

*if tbe Blessed Sacrament is reserved for tbe sick in an oratory of a religious house, may tbe community continue to use tbe oratory for meditation and other communiy devotions during tbe triduum of Holy Week?*

*S.C. Sacram.,* 26 March, 1929, *A.A.S.,* XXI, p. 631, III, n. 9: Ordinarii locorum perspectam habeant Rubricarum et Decretorum Sacrae Congregationis Rituum intentionem; scientes easdem (sacras particulas) asservari non ad publicam venerationem, imo hanc prohiberi . . .

July, 1932 (private): *The Jurist,* 1942, p. 187: Utrum in prohibitione venerationis supramcmorata includatur etiam prohibitio adeundi locum, quo asservantur Sacrae Particulae, pro Communis Observantiae Religiosae actibus, uti oratione communi, etc., in domo religiosa? *Resp.* Negative.

The withdrawal of the Holy Eucharist from public veneration in the church, and the law against receiving Holy Communion on Good Friday, except as Viaticum, arc logical consequences of the liturgical rule which forbids the consecration of the I loly Eucharist on that day. The reason for it, as commonly taught, is to bring more vividly before our minds the death and burial of Christ. Some writers teach that the place where the Blessed Sacrament is reserved for the sick during this time should be closed to the public, and there can be no doubt that this is to be recommended whenever possible. But the rule is not so rigid as to admit of no exceptions, especially in communities where it is necessary to reserve the Blessed Sacrament, and the only suitable place is the oratory. The oratory may be used for community exercises but there should be no Eucharistic devotions; in our view, the accustomed genuflections should take place when entering or leaving the oratory, unless the sanctuary has been screened by a veil.

### **603.**—Holy Thursday Mass: One Chalice

*In a church which possesses only one chalice, may the Host to be consumed the next day be reserved in a ciborium or a lunette?*

Since the rubrics of the Missal on that day, as well as the rubrics in *Caeremoniale Episcoporum* and *Memoriale Rituum,* direct that the Host shall be reserved in the chalice used at the Mass of the Presanctified on Good Friday, we must conclude that, if there is only one chalice available, the second Host at the Holy Thursday Mass should be left on the corporal until after the ablutions, and placed in the chalice after it has been purified. This is the recommendation, which we think is correct, given by *I'Ami du Clergé,* 1927, p. 512.

### **604.**—Mass of the Presanctified

*Is there a liturgical rule that the celebrant at thisfunction must be the priest who consecrated the host at the Mass on Holy Thursday?*

There is a widely spread belief that the celebrant on Holy Thursday and on Good Friday must be the same priest. It is probably due to the fact that there is only one Mass in each church on these days, and the celebrant is usually the senior priest. But there is no law requiring both functions to be performed by the one priest. On the contrary, *Caeremoniale Episcoporum,* II, xxv, i, and xxvi, rubr. presupposes that the celebrants of each rite may be different: "Si Episcopus velit ipsemet celebrare in die Parasceve, serventur infrascripta . . . Quae praeparanda pro officio feriae sextae in Parasceve, Episcopo tantum praesente, seu absente. . . .**

*A priest's faculty of duplicating extends to Holy Thursday. Does this imply that he may be the celebrant on Good Friday at two different places?*

Unless the induit grants this faculty expressly, we are of the opinion that it docs not extend to duplicating on Good Friday; for the faculty is usually for celebrating Mass, and the rite on Good Friday is not Mass. The second Mass on Holy Thursday should be celebrated as on any other day, without the concluding ceremonies. Cf. *l'Ami du Clergé,* 1933, p. 320.

We must confess, however, that this solution, which we think correct, is by no means certain. For the Mass on Holy Thursday morning, saving an induit to the contrary which is often obtained, cannot be celebrated unless the Good Friday morning office is to follow, as directed by 5.R.C., n. 3842, and it could be argued, therefore, that permission to duplicate on Holy Thursday implies permission for Good Friday.

*The rubrics on this day seem to indicate that all in the congregation, including women, adore the cross placed on the steps of the altar. How does this harmonise with the rule that women are not permitted on the sanctuary during the liturgical offices?*

*Missale Romanum:* Postea sacerdos solus portat Crucem ad locum ante altare praeparatum ct gcnuflcxus ibidem eam locat. . . accedit ad adorandam Crucem . . . Postmodum Ministri Altaris, deinde alii clerici, et laici, bini et bini. . .

*Memoriale Rituum,* Eng. Tr. pp. 37,58 : . . . servers open out the carpet on the steps of the Altar or Sanctuary. The celebrant . . . devoutly carries it to the place prepared. . . . The celebrant adores on both knees three times at appropriate intervals..... After the servers, the confraternities, if there are any, in their penitential garb, go and adore; and after these the men, and finally the women, all walking two by two, gravely and devoutly.

Rubricians observe that there is no reason why the cross should not be taken, if desired, to the faithful kneeling at the altar rail, and this is customary in many places.[1] But the *Memoriale Rituum* makes no provision for any alternative method, and it seems that the entry of women on the sanctuary for the adoration of the cross on Good Friday is correct. On other similar occasions, when the laity follow the clergy in some rite, the *Memoriale Rituum* expressly directs it to be at the altar rail, c.g. Candlemas, Palm Sunday, Ash Wednesday. The ommission of this direction on Good Friday is notable.

There is a general rule that women should not appear on the sanctuary during liturgical offices, but it is not an inviolable rule, and the nuptial blessing may be regarded as a further exception, in our opinion.[2] The Good Friday rubric, indeed, rather confirms our opinion about the nuptial blessing, since in both instances the position is defined in the same terms "ante altare".

1 Fortcscuc-O'Connell, *Ceremonies of/be Roman Rife,* p. 305.

* Q 5'9·

## §4. OUR LADY

### 605.—Feasts B.V.M.

*Is there a feast and Mass of the Immaculate Heart of Maty? When exactly was tbe world consecrated to Our Lady under this title?*

In an extensive discussion of the subject, a writer in *l'Ami du Clergé,* p. 620, shows that the title is substantially identical with The Most Pure Heart of Mary, which had a feast and Mass *Adeamus* observed in certain places on the Saturday after the octave of Corpus Christi, that is to say the day following the Feast of the Sacred Heart of Jesus; in other places on a day within the octave of the Assumption. It was to beexpected that the *Congregation of Kites* would provide a feast of the Immaculate Heart of Mary for the universal calendar, and in 1944 it was assigned to 22 August.

This consecration or dedication occurred in the course of the radio address given by the Holy Father in a broadcast to Portugal, 31 October, 1942.[1] It contained a prayer of consecration which has been published in English by the *Catholic Truth Society,* with the approval of His Grace, the Apostolic Delegate. This prayer was printed in *The Clergy Review,* 1943, XXIII, p. T95, in the course of an article by His Grace on the subject; there has been attached to the prayer[2] an indulgence of three years, and a plenary indulgence each month, on the usual conditions, for its recital daily.

*Is there any reason why 2 July should be assigned to the Visitation? One would think it should occur immediately after the Annunciation.*

The feast of the Visitation is of fairly recent origin, being established for the universal Church on this date by Urban VI in 1389. Previously, it was observed in some localities at various times, including dates in April, as at York. The more ancient liturgical commemoration is on Ember Saturday in Advent, which is seen to follow correctly and chronologically after the commemoration of the Annunciation on the previous Ember Wednesday. It is true that the dates assigned throughout the year for commemorating the mysteries of Christ's life do preserve a certain chronological fitness: thus nine months intervene between the Annunciation and Christmas, and between Our Lady's Conception and her Nativity. At the time of the Annunciation Elizabeth had been with child for six months (Luke i, 36) and, therefore, the choice of 24 June for commemorating the Nativity of John the Baptist is justified. The Visitation followed immediately after the zYnnunciation—Mary went "with haste" (Luke i, 39); she remained with Elizabeth for three months (Luke i, 56) and eight days later John was circumcised (Luke i, 59). Excgctcs differ in their interpretation, but it does not seem unlikely that Our Lady's stay with Elizabeth included not only

[1] *A.AS.,* 1942, XXIV, p. 513.
[1] *Op. at.,* p. 346.

John's birth but his circumcision also; in which case 2 July offers itself as an appropriate date for commemorating the Visitation, the date, namely, on which it was concluded. This explanation is not certain, but it seems the only one that can be suggested. Cf. Cabrol, *The Year's Liturgy*, II, p. 9; *Catholic Encyclopedia,* XV, p. 481; *l'Ami du Clergé,* 1932, p. 410.

*Is there any special reason why the calendar contains two feasts of Our Lady's Sorrows, the one on the Friday of Passion Week, the other on* 15 *September?*

We know of no really adequate explanation of this double feast. In the decree of Pius X,[1] which made the September feast (then on the third Sunday of that month) a double of the second class, the double celebration is mentioned without any reason being assigned. The September one is the later of the two. This was granted to the Servîtes in 1668 and gradually extended to the universal Church. The reason suggested by one writer is that the feast in Passion Week is dominated by the Passion of Our Lord, and the piety of the faithful called for another commemoration on which the unique consideration could be the Sorrows of Our Lady.[2] Dom Lefebvre, O.S.B., suggests in the *Daily Missal*·. "Just as the first feast of the Sorrows of Mary, in Passiontidc, shows us how she had a share in the sacrifice of Jesus, the second feast, in the season of Pentecost, tells us of all the compassion which the Mother of the Saviour feels for the Church, the spouse of Jesus who is crucified in her turn. . . ." Dr Juergcns in the Proust *Daily Missal* writes on the Passiontide feast: "The first feast especially commemorates the Compassion of Mary; the second, kept on September 15th, the devotion to the Seven Sorrows."

## 606.—"Our" Lord is with Thee

*Many popular prayer books of a century ago print* "our *Lord is with thee" instead of* "the *Lord is with thee". Why and when was tbe change introduced?*

It was introduced through the influence of Challoner's revision of the Rhcims New Testament. The original translators nearly always rendered "Dominus" by "Our Lord", and they considered the point of sufficient significance to be the subject of a note on 1 Tim. vi, 20: "And now we Catholics must not say *"the* Lord' but *'our* Lord', as we say *our* Lady for His mother, not *the* Lady. Let us keep our forefathers' words, and we shall easily keep our old and true faith that we had of the first Christians." Bishop Chailoner altered this established Catholic usage, thinking doubtless, as Canon Burton suggests, that the reasons for avoiding the Protestant usage had ceased to exist and that his own version was nearer the Vulgate.

Cardinal Wiseman deeply resented this changing of the pronoun into the article, "a change which we strongly deprecate, as stiff, cantish, destructive of the unction which the prayer breathes, and of that union which the pronoun inspires between the reciter and Her who is addressed". He

[1] *S.R.C.,* 13 May, 1908.
[2] *'PAmi duCItrgi,* 1931, p. 304.

pointed out that 'W Lord is with thee" was the Catholic version current in England even before the Rhemish translation appeared, and that this form should be preserved in the prayer even though accuracy of translation demands, perhaps, that the article should be used in a vernacular version of the New Testament.

However, the use of the article for the pronoun is now universal and we find that the *Hail Mary* is printed thus in current French, Dutch and German prayer-books. Wiseman writes that Catholics have always, till lately, been accustomed to say *"our* Lord is with thee"—his words were written in 1837—but we cannot give any specific date when the change was officially introduced. No doubt it came in gradually as Catholics became accustomed to Challoner's version in the New Testament and in the Catechism. Cf. Burton, *Life and Times of Bishop Challoner,* I, p. 282; Wiseman, *The Dublin Review,* April 1837, and *Essays on Various Subjects,* I, p. 76.

## 607.—Litany of Loreto

*Apartfrom not gaining the indulgences, may one continue the practice of singing the Litany with three invocations to one "orapro nobis"?*

Canon 934, §2:... indulgentiae penitus cessant ob quamlibet additionem, detractionem vel interpolationem.

§3. Ad indulgentiarum acquisitionem satis est orationem alternis cum socio recitare, aut mente eam prosequi, dum ab alio recitatur.

J. *Poenit.,* 21 July, 1919; *A.A.S.,* 1920, XII, p. 18: Propositum fuit huic S. Tribunali sequens dubium:

"Quibusdam in locis consuetudo invaluit Litanias Lauretanas sic cantandi ut (1) semel tantum recitetur *Kyrie, eleyson* (Kyrie eleyson, Christe eleyson, Christe audi nos, Christe exaudi nos); (2) invocationes mariales ternae conjungantur cum unico *ora pro nobis* (Sancta Maria, Sancta Dei Genitrix, Sancta Virgo Virginum, ora pro nobis); (3) semel tantum pariter dicatur *Agnus Dei* (Agnus Dei, qui tollis peccata mundi, parce nobis, Domine, exaudi nos, Domine, miserere nobis).

"Attento can. 934, §2, *Codicis Juris Canonici,* quaeritur utrum hac ratione fideles lucrari valeant Indulgentias Litaniis adnexas."

Sacra Poenitcntiaria, mature consideratis expositis, respondendum censuit: *Negative.*

Hanc autem sententiam . . . Sanctitas Sua confirmavit et insuper declarari jussit: *praedictam consuetudinem non esse approbandam, ideoque ab Ordinariis prudenter curandum ut in locis ubi viget submoveatur.*

*S.R.C.,* 2 October, 1920; *A.A.S.,* 1920, XII, p. 548: A Sacra Rituum Congregatione expostulatum est: "An attento decreto Sacrae Poenitcntiariae Apostolicae (Sectio de Indulgentiis) dici 21 iulii 1919 circa Indulgentias Litaniis Marialibus adnexas, Litaniae Lauretanae cantari possint per trinas invocationes, respondente quartam fideli plebe."

Et Sacra Rituum Congregatio, audito specialis Commissionis suffragio, ita respondendum censuit: "*Affirmative* seu Litaniae Lauretanae cantari possunt per trinas invocationes cum singulis rcspcctivis *ora pro nobis,* populo quartam invocationem cum respectivo *ora pro nobis* respondente."

We have thought it advisable to print in full the two replies on the manner of reciting the Litany of Our Lady, since it is sometimes said that there is a contradiction between them, or that the triple invocation with one *ora pro nobis* may be continued provided one is content to forgo the indulgences. As is clear from the text, there is no contradiction, since in both replies we are directed to recite *ora pro nobis* after each invocation. Apart from induit, it must be said that the triple invocation with one *ora pro nobis* is unlawful as well as causing the loss of indulgences.

*Is it correct or incorrect for the people to double the initial invocations "Lord, have mercy on ns", etc., when the Utany is being recited in public?*

*S.R.C.,* 6 November, 1925, n. 4397.6: Attenta declaratione Sacrae Pocnitentiariae Apostolicae (Sectio de Indulgentiis), dici 21 Julii 1919, inspectis etiam Decretis Sacrae Rituum Congregationis, n. 4362, diei 15 Octobris 1920, et n. 4367, dici 10 Novembris 1921, dc ratione cantandi Litanias Laurctaneas, quaeritur:

An in Litaniarum recitatione absque cantu iterari liceat priores invocationes hoc modo: V. Kyrie, eleison. R. Kyrie, eleison. V. Christe, eleison. R. Christe, eleison. V. Kyrie, eleison. R. Kyrie, eleison. *Usp.* Affirmative.

For so small a matter there have been quite a number of decisions, the principle at stake being the rule of canon 934, §2: ". . . sed indulgentiae penitus cessant ob quamlibet additionem, detractionem vel interpolationem". It suffices to recite the Litany, without duplicating the initial invocations, exactly as the text is printed in *Preces et Pia Opera* (1958), η. 290. We learn from the very full explanation of all these decrees in *Ephemerides Litnrgicae,* 1926, p. 332, that the third *Kyrie, Eleison* is directed to the Holy Spirit. The Litany should be printed, without duplication, but the custom of duplicating is expressly permitted in n. 4597.6. It is for the parish priest responsible for the prayers at public services in his church to decide which method is to be followed; it seems to us that, if the custom of duplicating exists in any place, there is no point in altering it. But other variations, changes or omissions arc forbidden by the decrees mentioned in n. 4397.6.

*Why is tbe English version of certain invocations in this Litany rendered in the superlative, e.g. "Mother most amiable" for "Mater amabilis"?*

We can offer no satisfactory reason for this rendering in our version of the Litany, and can only suppose that the translator, whoever it was, used the superlative in certain invocations for the purpose of euphony. On examining a number of old prayer books it was found that the Litany in English, substantially as we have it now, is at the end of a *Manual of Prayers,* t688, and in a *Primer* of 1699. Other current vernacular versions translate literally without superlatives as in German, *Dn Hebliche mutter,* or in Dutch *Minnelijke Moeder.*

*May this Litany and others in the Manual of Prayers be abbreviated in order to make them easily understood by the people and less tedious?*

The principle regarding the public recitation of prayers in extra-liturgical devotions is contained in canon 1259, §1: "Orationes et pietatis exercitia ne permittantur in ecclesiis sine revisione et expressa Ordinarii loci licentia, qui in casibus difficilioribus rem totam Sedi Apostolicae subiciat. §2. Loci Ordinarius nequit novas litanias approbare publice recitandas." Thus the form of Litanies, as of all public prayers, must be that which is approved by ecclesiastical authority. There exist several decrees of *S.R.C.* prohibiting additions to the Litanies, e.g. the names of saints.[1] A decree of 3 March, 1674, n. rjoi, prohibits the abbreviation of the Litany of the Saints. It is true, the text refers to "singing" and I can find no other explicit prohibition with regard to "recital". But there cannot be the slightest doubt that the proposed abbreviation would violate the principle of canon 1259.

## 608.—The Rosart

*Should the glorious mysteries alone be recited publicly on all Sundays throughout theyear?*

The widely spread custom of reciting the joyful mysteries on Mondays and Thursdays, the sorrowful mysteries on Tuesdays and Fridays, and the glorious mysteries on Wednesdays, Saturdays and Sundays, has been approved by the Holy Sec and should be retained. "Retenta consuetudine huic Sanctae Sedi probata, ut per gyrum cuiuslibet hebdomadae singula mysteria ita recolantur: . . . gloriosa tandem in dominica, quarta feria et sabbato."(i) It should be noted, however, that the decree is concerned with the rights and privileges of the Confraternity of the Rosary, and it is supposed that, as far as possible, the rosary is being recited every day. The text quoted repeats the phrase of the *Congregation of Indulgences,* 1 July, 1839.5, which approved this custom, but it is not necessary to recite the appropriate mysteries in order to gain the indulgences which may be attached.

The *Manual of Prayers,* issued by the English bishops in 1886, states that the joyful mysteries arc usually recited on Sundays from Advent to Lent; the sorrowful mysteries on Sundays during Lent; the glorious mysteries on Sundays from Easter to Advent.

IFZw/ *is the origin and purpose of the additional three small and two large beads attached to the rosary in its presentform?*

(i) A search through the usual manuals being unsuccessful, a number of theological students were asked what they were accustomed to say on these beads and why. The replies were nearly all different: a threefold *Gloria Patri* or a threefold *Ave* and one *Pater* or *Credo* at the end, or at the beginning, in honour of the Blessed Trinity, or for an increase of the three theological virtues, or for the pope's intention, etc. Each one recorded what he had

[1] Nn. 1002, 1522, 2613 ad 7.
[2] Leo XIII, *(Jbi Primant,* n. xiii, 1898; Ferraris, *Bibliotheca, Supplementum,* p. 699.

been taught as a child, or what the parish priest was accustomed to say in reciting the rosary in public. For the most part the answer was that the person said no prayers on these beads, and did not know what they were for, the point not having occurred to him.

One tiling is certain: neither the complete and devout recitation of the rosary, nor the gaining of any indulgences attached thereto, requires anything whatever beyond the recitation of a *Pater* once and an *Are* ten times for each decade, together with meditation on the mystery commemorated.

In our present use, additional prayers before or after do not violate the rule of canon 934, §2/ and they are to be commended, whatever idea one has of their nature and purpose. The statement sometimes met with that the *Credo, Pater* and triple *Ave* are meant for those who cannot meditate, in order that the indulgences may be gained by saying these prayers instead, appears to be devoid of all foundation.[1] Accordingly, one may privately adopt any devotional use of these beads, and in the public recitation of the rosary continue whatever is customary in the locality.

(ii) The devotional practice being so varied, some explanation is required of the fact that rosaries, for the last two or three centuries, always have a pendant of at least three small beads. The best explanation, though not absolutely conclusive, is that given by Fr Thurston, S.J., in *The Month,* December 1900, p. 632. The Brigittine rosary, still in use, was extremely popular in the sixteenth century, consisting of six decades and three extra beads for the recitation sixty-three times of the *Are,* in commemoration of the years traditionally assigned to Our Lady's Life.[3] Arranged in this way a Brigittine rosary could be used also as a Dominican rosary, and at the present time the Brigittine indulgence may be attached to a rosary of five decades.[4] The extra three small beads thus became very familiar in the construction of a rosary', and when the Brigittine form became less popular they were retained. The illustration of a Brigittine rosary given in *The Month,* August 1902, p. 202, contains only three small beads as a pendant. Of the two large beads now usual, one would correspond to the *Pater* due to a rosary whether of five or six decades, and the other large bead, very likely, to the *Credo·,* the crucifix is a fairly obvious pendant to a religious article, and some rosaries have the word *Credo* stamped upon it.

*// there any objection to a rosary of knotted cord, the knots representing the beads?*

A rosary of knotted cords, or any other means of counting the prayers, may be used for the devotion. But in order to gain the many indulgences attached the Holy See requires, firstly, that the rosary should be made of solid material, and the knotted article seems to come within this requirement. It is required, secondly, that the rosary should be in the accustomed form, which consists of beads or grains of some strong material strung together; the Holy Office (section of Indulgences), 15 Marell, 1909, replied "nihil esse innovandum" to a request that small medals of Our Lady should be allowed,

[1] Fanfani, *De Rosario,* §3; Q. 242.
[*] *Ecclesiastical Review,* IQ02, XXVII, p. 545.
[3] For this devotion and indulgences attached, Cf. *Co!lai. Bruges/.,* 1928, p. 216; Gougnard, *De Indulgentiis,* p. 226.
[4] Gougnard, *op. cit.,* p. 227.

instead of the usual beads, for separating the decades. There is no reply, so far as can be discovered, rejecting a rosary made of knotted cords, nor is the question discussed by the writers on the subject. It seems certain, however, that if medals may not take the place of grains, *a fortiori* the same must be said of knots. It would be an innovation, and the Church, in order not to cause astonishment to the faithful, is always averse to new modes being introduced into established devotions.

### 609.—May Devotions

*How came the month of May to be associated with devotions to Our Lady? Is the Litany as well as the rosary specially connected with this month?*

The custom of devoting a special month to some particular devotion is a good example of a non-liturgical popular practice. The origin of most of these devotions is not earlier than the seventeenth century. We cannot discover any more explicit account of associating May with devotion to Our Lady than that given in the *Catholic Encyclopaedia,* Vol. X, p. 542. It originated, according to this account, in Rome at the Roman College, towards the end of the eighteenth century. Fr Latomia, S.J., started the practice amongst the students to counteract the growing infidelity and immorality of the times. From the Roman College it spread to other Colleges of the Society and through them to the Church at large. For later developments cf. *Fhe Clergy Review,* 1936, XII, p. 428. According to ScanneU's *Catholic Dictionary,* it was introduced into England by Dr Gentili. It is the oldest example of a whole month being devoted to a special devotion.

Other similar monthly devotions in honour of Our Lady have not obtained the same widely spread popularity, e.g. August in honour of the Immaculate Heart of Mary, December in honour of the Immaculate Conception. Very likely the similarity between the names "May" and "Mary" may, perhaps, be to some extent responsible. The Litany of Loreto is of more ancient origin and is not, we believe, specially connected with the origin of May devotions. This Litany, which probably dates from the middle of the fifteenth century, appears to have been first printed in a history of the Santa Casa of Loreto in 1576.

### 610.—Dedication of Infants to Our Lady

*Frequently after the baptism of an infant the parents request its dedication to Oar Lady. Does there exist any approved rite for this purpose?*

Apart from rituals sanctioned for local use, there exists no liturgical formula for dedicating a child to Our Lady immediately after baptism; when we read of the practice in lives of the saints it is usually the parents who do it as a private act of devotion.

In the local rite of Poitiers the child accompanied by its godparents is received at Our Lady's altar by the priest vested in surplice and white stole. The godparents, after reciting *Pater, Are* and *Credo,* renew the baptismal

promises, the priest gives the *Benedictio Infantis,* n. 45 amongst the "Benedictiones non reservatae" of the Roman Ritual, and parents and godparents recite in conclusion an approved prayer of consecration.1 In Langrcs a longer approved formula is in use.2 In Liege the custom exists of performing the closing ceremonies of the baptismal rite at the Lady altar.3

In our opinion none of these rites, authorized for the localities concerned, may lawfully be used in this country without the sanction of the local Ordinary; even the renewal of baptismal vows, to which an indulgence is attached, must be according to a formula approved by the Ordinary.4*

But one may always, at the Lady altar, use any appropriate liturgical formula authorized by the common law, and the most suitable for the occasion are the *Benedictio Infantis,* η. 45 in the Ritual, the prayer *Sub tiium praesidium* and the prayer n. 8 amongst the *Orationes Diversae* of the Missal, supplemented by the blessing of a medal or crucifix for the infant's use.

If some more explicit formula of consecration is desired for public use in churches, authorization would have to be obtained. The following is a translation of the Liege formula: "O Mary, chosen to be the mother of the infant God and to guide 1 lis first steps, take under thy care this child whom we confide to thy maternal protection. Preserve him from all dancers of soul and body. Give him an understanding of the things of God and a will to follow them, that under thy care he may be faithful to tliy Divine Son, in whom he has been baptized, and may reach eternal life."

## 611.— Devout Female Sex

*In Bate's translation of the breviary "pro devoto femineo sexte" is rendered "women vowed to God". Is this the correct meaning of the original?*

The words occur in various places in Our Lady's office as part of the antiphon at Vespers or of a responsory at Matins. In some English versions as, for example, *Dominican Sisters' Prayer Book,*6 the words are rendered "for the devout female sex", and this literal and popular translation of the Latin is, no doubt, responsible for the phrase "the devout sex", which is almost as common in our speech as "the fair sex" or "the weaker sex".

Even at the risk of appearing ungallant, it seems to us that the correct rendering is that of Lorcl Bute. It is the meaning Gucrangcr gives to the words when they occur in *L'Année Liturgique, e.g. XV,* p. 78: "les femmes vouées à Dieu". Λ German rendering has "das Gottgeweihtc weibliche geschlccht".0 Fr Martindale is in agreement to the extent, at least, of rejecting the obvious "devout female sex"; he renders the phrase "for all dedicated women" in his translation and commentary on the *Little Office of Our LadyS* Also "women vowed to God" seems to harmonize best with the context, which mentions first the people, then the clergy, and

1 *Documentation Catholique,* 1926, XV, p. 423.
·/'*Ami du Clergé,* 1922, p. 752.
'J2.L.P., 1925. P· 256·
4 *Precer et Pia Opera,* n. 632.
• Angelico, Rome, 1925·
• Stephan, *Das kirklicbe Stundengebet,* Pustct, 1927, p. i8j.
7 C.T.S. D. 2J9. P· 46·

lastly the female sex. There would seem little point in mentioning devout women, as distinct from the people in general, even though we all willingly grant that they arc devout; but by taking the phrase as referring to women under vows and in juxtaposition to the clergy, the distinction between the three categories of persons mentioned is apparent.

On the other hand, the meaning of "devotum" which we are rejecting for this context is found in other liturgical prayers as "devout" or "pious", e.g. towards the end of the *Exuitet:* "Precamur ergo Te Domine, ut nos famulos tuos, omnemque clerum et devotissimum populum. . . ." The good nuns are mentioned so rarely in liturgical offices that we feel sure the devout sex in general will gladly allow them to enjoy exclusively this reference in Our Lady's office.

## §5- FUNERALS

### 612.— Funeral Rites

*Some priests, when they receive a body in church on the eve of the Requiem Mass, use the holy water and the incense during the silent recital of the "Pater Noster" as in the absolution after the Mass. There is no mention of this in the exequial rubrics. Can this be done for the sake, say, of lending greater solemnity to the otherwise rather brief and simple service?*

Canon 1215: Nisi gravis causa adest, cadavera fidelium, antequam tumulentur, transferenda sunt c loco in quo reperiuntur, in ecclesiam, ubi funus, idest totus ordo exequiarum quae in probatis liturgicis libris describuntur, persolvatur.

The desire to lend greater solemnity to sacred rites is clearly not a sufficient reason for performing them otherwise than the rubrics determine. Neither in the *Rituale Romanum,* VI, iii, 4, nor in our *Ordo Administrandi,* is it directed that the body at its reception should be blessed and incensed during the *Pater Noster* as at the rite of absolution.

Some authority, perhaps, for the practice might be discerned in *Decreta Authentica,* η. 3748.1, which directs that the absolution is to take place after the Mass even though the same rite has already taken place on the preceding evening. But this refers to the *Non Intres, Libera, etc.,* of the absolution, which it is customary in certain places, e.g. in Switzerland, to perform on occasions other than those directed by the rubrics. We have no custom of this kind, and in any case n. 3748.1 gives no authority for blessing and incensing the body at the *Pater Noster.*

*In this church we have a custom at funerals as follows: the parish priest always says the Requiem Mass, and gives the absolution, saying the prayers of the Ritual as far as the "In paradisum" inclusive. Then another priest takes over at the church door, goes to the grave and begins with the "Ego sum". Is this custom correcti*

From 5.R.C. 3029-10, and 3798, 2, the priest who celebrates the Mass must also give the absolution, the only exception to this rule being in favour

of the local Ordinary, i.e. the bishop with jurisdiction, not a titular bishop. But there is no rule directing that the body must be conducted to the cemetery and interred by the priest who celebrated Mass. Nor is it incorrect for the *In Paradisum* to be recited by the priest who is not accompanying the body to the cemetery; it is a chant which may be sung at the bier, after the absolution, if the interment does not follow immediately, as directed in *PStuale Romanum,* VI, iii, 11.

*Recently a priest said a few words in the church, at a funeral rite, in praise of the deceased person. Some thought that this was not allowed. Is there actually any prohibition of this practice?*

*S.C. Consist.,* 28 June, 1917,1 issued a series of rules about preaching. Cap. iii, n. 21, states: "Elogia funebria nemini recitare fas est nisi praevio et explicito consensu Ordinarii, qui quidem, antequam consensum praebeat, potest etiam exigere ut sibi manuscriptum exhibeatur." The and the preceding article are largely concerned with preventing matters from entering into sacred discourses, but the prohibition applies to all panegyrics even though they have no political flavour. In the funeral rite, the Church does not stress the virtues of the deceased, or even apologize for his faults; she deplores his sins and beseeches the mercy of God. The rule against panegyrics obviously applies only to the words of the priest at the sacred function in the church or cemetery. For exceptional reasons, in the case of a public man, it might assist the cause of religion to say something about the deceased's past life, but permission must be obtained from the local Ordinary.

## 613.— Abridged Funeral Rite

*Is a parish priest entitled to refuse to have the body of a deceased person in the church unless a Requiem Mass is to be said?*

Canon 1215: Nisi gravis causa obstet, cadavera fidelium, antequam tumulentur, transferenda sunt e loco in quo reperiuntur, in ecclesiam, ubi funus, idest totus ordo exequiarum, quae in probatis liturgicis libris describuntur, persolvatur.

*PJ/uale Romanam,* VI, i, 7: Quod antiquissimi est instituti, illud, quantum fieri poterit, retineatur, ut Missa, praesente corpore defuncti, pro eo celebretur. . . .

*Ibid.,* iii, 17: Quod si ob rationabilem causam ne unum quidem Nocturnum sine Laudibus dici possit, aliae praedictae preces ct suffragia nunquam omittantur; n. 18: Missa vero, si hora sit congruens, ritu pro defunctis, ut in dic obitus praesente corpore, ne omittatur, nisi obstet magna dici solemnitas, aut aliqua necessitas aliter suadeat: et post Missam fiat ut supra.

J'.R.C.» i May, 1942; *A.A.S.*, XXXIV, p. 205: In exequiis autcm, si Missa celebretur, semper—nisi de pauperibus agatur—fiat in cantu. . . . Quandocunquc vero ex rationabili causa funebris functio ritu breviori aut simpliciori agi contingat, ea tamen gravitate ac pietate peragatur, quam non minus reverentia sacrorum quam populi aedificatio requirit.

(i) The wording of canon 1215 seems to suggest an affirmative answer to the above question, namely, a grave cause may justify not bringing the body to the church, but if it is brought at all the whole rite is necessary. The text of the Roman Ritual, however, docs not support this interpretation, and it is to the liturgical books that we are referred by the canon. Similar rubrics existed in the earlier Roman Ritual, upon which our *Ordo Administrandi* (1915) is based, but in the current text they are even more accommodating, e.g. in n. 17 we now read "ob rationabilem causcm" instead of "urgens necessitas". Therefore the parish priest is under an obligation to receive the body in the church from canons 1215 and 1230, §1, but the rite is prescribed with the qualifications of the rubrics: "quantum fieri potest", "nisi aliqua necessitas . . . causa rationabilis". In such cases the rite consists of all the remaining prayers and blessings in the Ritual.

The grave cause may be such that it is not possible to bring the body to the church at all, but if the responsible persons are willing to do so, the parish priest may not refuse merely because the complete rite will not be performed. This is clearly deduced from the above texts.

(ii) Is he not entitled to refuse if he forms the honest judgement that there is actually no excuse or necessity for truncating the usual rite? We think he may not for two reasons. In the first place, the wording of the above texts requires a grave cause for not bringing the body to the church, but merely any kind of necessity for omitting the Mass; the latter phrase seems less strong than the former. l ie should, at least in the case of a parishioner, refer the matter to the Ordinary before refusing, since his obligation is clearly expressed in canon 1230, §1. Moreover, in our *Ordo Administrandi,* VI, iii, 6, a bracketed rubric expressly provides for the reduced rite within the church "in exequiis privatis", a direction which is due, no doubt, to the custom obtaining in this country of allowing persons to choose the shortened form.

(iii) One can sec the point of view favouring the right of a parish priest to refuse: his attitude is not due to officiousness out to the desire of restoring the liturgy of the dead to its rightful place: people neglect the Requiem Mass, as they do the Nuptial Mass, for no adequate reason, and they might be brought to a better state of mind if the priest stiffened his attitude. It is certainly, therefore, open to him to decide that there is no necessity for reducing the rite and, short of refusing access to the church, he may by every lawful means—entreaty, persuasion, reproof—urge a Requiem Mass. He should also remember that the liturgical privileges given to the exequial Mass with the body present apply also to a Mass celebrated as part of the funeral rite when the body is, for reasonable causes, not physically present. It is said to be morally present, according to 5.R.C., 1 May, 1942, whenever the Mass can be celebrated within two days of decease; the rule provides a useful method of observing the requirements of the liturgy and, at the same time, of meeting the wishes of people who, for various reasons, find it inconvenient to have a Requiem Mass *praesente cadavere.*

## 614.—Exequial Office on Sunday

*May the Requiem Mass {praesente cadavere} and the funeral office take place on a Sunday?*

It is not customary in many parts to have an exequial office on Sunday since the day is found unsuitable or inconvenient for many reasons. There is no liturgical law against it, unless the Sunday happens to be also a feast on which the exequial office is forbidden, or unless there is in the church only one Mass which the law requires to be other than a Requiem Mass, e.g. Mass *pro poptdo.*

The list of days upon which the exequial Mass is everywhere forbidden by the common law is given in *Addit, et Variat.,* III, 4· It is given in more specific detail by some of the writers, as Crocgaert, *De Rubricis Missalis Romani,* p. 217, and the diocesan Ordo usually intimates the prohibition on these days in the calendar.

Some further precisions arc contained in J'.R.C., 1 May, 1942; *A.A.S.,* XXXIV,p. 205 :Quum plures locorum Ordinarii ab hac Sacra Rituum Congregatione exquisierint qualiter se gerere debeant quoad functiones funebres quae, praesertim hac tempestate, a defunctorum propinquis etiam diebus dominicis aut festis de praecepto celebrandae indiscriminatim petuntur; haec porro S. R. Congregatio eosdem vehementer hortatur, ut in huiusmodi functionibus peragendis curent ut omnino serventur praescriptiones quae tum in Rituali Romano (VI, i, 8 et iii, 18) cum in novis Missalis Rubricis *{Addit, et Variat, in Rubr. Miss.,* **III,** n. 4) continentur.

In exsequiis autem, si Missa celebretur, semper—nisi de pauperibus agatur—fiat in cantu, reprobata invalescente praxi eam legendi absque cantu etiam cum funus externam induit pompam. Quandocumquc vero ex rationabili causa funebris functio ritu breviori aut simpliciori agi contingat, ea tamen gravitate ac pietate peragatur, quam non minus reverentia sacrorum quam populi aedificatio requirit.

Quod vero ad Missae funebris qualitatem spectat, Missa exsequialis ea dicitur, iuxta novas rubricas *{Addit, et Variat.* l. c., n. 4), quae fit corpore defuncti physice aut saltem moraliter praesente. Corpus autem censetur praesens in altero ex immediate sequentibus duobus ab obitu diebus (S. R. C., decret. 3755.2); non autem ultra biduum ab obitu (S. R. C., decret. 5767, ad XXVI). Quoties autem praefata Missa a rubricis impeditur, transferri potest in proximiorem diem similiter non impeditum *{Addit, et Variat.,* l. c., n. 4). Si vero Missa impediatur non a rubricis, sed ab alia causa, tunc dicitur opportuniori die post acceptum mortis nuntium *{Addit, et Variat.,* l. c., n. 6); sed haec Missa, etsi privilegiata, non est tamen exsequialis, ideoque diebus dominicis aut de praecepto prohibetur. Hoc igitur in casu dicatur Missa dominicalis aut festiva dici; poterit tamen fieri absolutio ad tumulum, exceptis iis diebus dominicis et festis in quibus Missa exsequialis etiam praesente cadavere prohibetur *{Addit, et Variat.,* l. c., n. 4).

Hoc servandum praecipit S. R. Congregatio, sive agitur de militibus in locis dissitis bello peremptis, quorum mortis nuntius mature ad suos non pervenerit; sive agitur de definitiva alicuius corporis humatione, sive denique—coque magis—dc defunctorum anniversariis propriis vel fundatis, et de similibus casibus.

### 615.—Exequies of Deceased Clergy

*At the month's mind of a deceased parish priest, and again on the anniversary, a sung Requiem was celebrated at which the first formula for All Souls' Day was used; for the absolution the celebrant stood between the cross and the catafalque and "Non intres" was recited. Was all this correct?*

From the rubric of the missal, at the encl of the third Mass on All Souls' Day, the correct formula for a deceased priest, both *in die obitus* and *in anniversario,* is the first Mass of All Souls' Day, with the appropriate prayer from the *Orationes Diversae.* This rule applies not only to these two occasions but to all "privileged" Requiem Masses for a deceased priest, which include the month's mind. If the Mass is not "privileged" the correct formula is that of the *Missa Quotidiana.*

The *Non intres* is recited only at the cxequial Mass with the body, at least "morally", present. Also, only at this Mass is the position of the body, or of the catafalque if the body is "morally" present, reversed so as to be facing the people. Accordingly the priest should stand for the absolution, on other occasions, in the usual position between the catafalque and the altar.

*Should five absolutions be accorded to all bishops, including titular bishops, or is it restricted to the funeral rite of the late Ordinary?*

The list of those to whom this honour is due, as given in *Caeremoniale Episcoporum,* II, xi, 13, describes the bishop as "episcopus proprius"; similarly in the opening rubric of the rite in the Roman Pontifical. .V.R.C., 20 November, 1903, n. 4119, has "episcopus ordinarius". De Herdt, *Praxis Pontificalis,* II, §203, observes: "Cum autem istae personae tam in Pontificali quam in Cacremoniali distincte exprimantur, ad minus non convenit, ut quinque absolutiones fiant in exequiis aliarum personarum quantumvis distinctarum."

We think, therefore, that in the common law the five absolutions may not be given at the funeral rite of a titular bishop, and if one reads occasionally in ceremonial books that the rite is observed at the funeral of all bishops, it is because the writer is not adverting to the distinction between titular bishops and Ordinaries. But there may well be customs or induits which sanction a departure from what seems to be the common law.

The only writer we have found who does expressly draw the conclusion that the rite should not take place at the funeral of titular bishops is I laegy, *Fonctions Pontificales,* II, p. 319, where it is stated, in a section explaining the funeral rite of a titular bishop, that only one absolution is given.

### 616.—Burial of a Priest

*Is there any law directing that the body of a priest should be buried in the cemetery facing the West, that is to say, in the opposite direction to that which is customary in the case of the laity?*

In earlier times it appears that the bodies of all the faithful, clergy as well as laity, were buried in the same position, facing the East, the idea being that they are all symbolically facing the direction from which Christ will come to judge the living and the dead.[1]*

For churches the directions of our present *Rituale Romanum,* VI, i, 18, arc quite explicit: "Corpora defunctorum in ecclesia ponenda sunt pedibus versus Altare maius; vel si funerentur in oratoriis, aut capellis, ponantur cum pedibus versis ad illarum Altaria: quod etiam pro situ et loco fiat in sepulcro. Prebyteri vero habeant caput versus Altare."

Rock states that this direction of the Ritual, reversing the order for a priest, is a late innovation. The idea behind this rubric is, no doubt, to preserve the attitude which the laity always occupy in the church, looking towards the altar; the priest, on the other hand, is represented as facing the people, an attitude which he used to occupy in speaking to them and, in some cases, in saying Mass. Whatever the symbolical reasons, the directions are clear. It should be noted, however, that the position of bodies with regard to the East will be observed only in those churches which are correctly orientated; even in these, the position of burial in the lateral chapels is determined by the altar, not by the point of the East. In cemeteries contiguous to the church many rubricians hold that the focus point is the high altar of the church, and that the same distinction between priests and laity should be observed in these cemeteries.[2]

In cemeteries which are quite distinct from the church, De Herdt and others record that it is fitting for the bodies of priests and laity to be placed as they would be in a church which is properly orientated. It is, in our opinion, more a matter of custom than what is fitting, and we can discover no law on the subject apart from the rubrics of some local rituals.

*How should the body of a priest be vestedfor burial?*

*Rituale Romanum,* λΓI, i, 12: Sacerdos, aut cuiusvis ordinis Clericus defunctus, vestibus suis communibus, usque ad talarem vestem inclusive, tum desuper sacro vestitu sacerdotali, vel clericali, quem ordinis sui ratio deposcit, quantum fieri potest, induatur; unusquisque autem cum tonsura et bireto. 13 : Sacerdos quidem super talarem vestem, amictu, alba, cingulo, manipulo, stola et casula seu planeta violacei sit indutus.

LR.C., 12 November, 1831, n. 2682.25: Cadavera Episcoporum, Sacerdotum, Diaconorum aliorumve de Clero debent ne sepeliri cum vestibus proprio Ordini congruentibus; an sufficit ut cum his in Ecclesia exponantur? *Resp.* Servetur cuiusque loci consuetudo.

23 May, 1846, n. 2915.9: . . . An liceat consuetudo in hac dioecesi servata ponendi calicem cum patena in manibus cadaverum Sacerdotum, dum a domo sua deferuntur ad Ecclesiam ct in ea explentur Excquiac; vel talis consuetudo eliminanda sit? *Resp.* Tolerandam esse, utpotc antiquitati conformem.

From an informative article in *Questions Rihtrgiques et Pariossiales, lyzG,* p. 110, wc learn that the custom of burying priests in vestments was recorded

1 Cf. Rock, *Church of Our Fathers,* III, p. }8r ; *Q.L..P.,* April 1956, p. no.
1 Cf. De Herdt, *Sacrae Lâturgiae Praxis,* III, §233.

by Amalarius *circa* 836 and was known to Bede. Directions to this effect were introduced into the Roman Ritual in 1614, and remain still as given above. d'.R.C., n. 2682, records and tolerates a variation of this practice: the vestments arc used, indeed, at the funeral office, but are not buried with the priest; difficulty in obtaining vestments, or their costliness, would be an adequate justification for this practice. In our conditions the rule of the Ritual should normally be observed; *S.R.C.,* n. 4228, permits black vestments, instead of violet, and in our opinion any colour suffices if violet or black vestments cannot easily be obtained.

The custom of placing a chalice and paten in the deceased priest's hands is also mentioned by Amalarius, and is expressly approved by J'.R.G, n. 291 j. The burying of silver vessels with the dead body would usually be a severe loss to the living, particularly in days when precious metals arc hard to come by: the ancient writers record the use of leaden, earthenware or glass vessels for funeral purposes. Since no mention of vessels is made in the modern Ritual, one is in no sense bound to follow the ancient custom, but a chalice and paten may be placed on the coffin during the funeral rite, on analogy with the reply given in n. 2682, and we believe this to be the common practice.

### 617.—Funeral of Catechumens

*When a convert actually under instruction, and showing every sign of acceptance of the faith, dies suddenly, may a Requiem Mass be said and the Catholic burial serviet performed, and may such a person be recommended publicly by name to the suffrages of the faithful?*

Whatever doubt existed before the Code, concerning the lawfulness of giving Catholic burial in this case, appears to have been settled by canon 1239, §2: "Catechumeni qui nulla sua culpa sine baptismo moriantur, baptizatis accensendi sunt." It occurs in the section of the Code "De Sepultura Ecclesiastica" and, as the normal funeral service with Catholic rites includes Mass, it is lawful to celebrate a Requiem Mass. The greater includes the lesser, and prayers may be asked publicly on behalf of a person for whom Mass has been publicly said. Whatever small danger of scandal there may be is easily removed—it is a good opportunity of recalling the doctrine of baptism by desire. I cannot find any writer who expressly draws these deductions, but the terms of the law are so clear and explicit that no comment is really needed.

### 618.—Blessing of Infant's Grave

*The rite "De Exequiis" provides a form for blessing the grave, if the cemetery is not already blessed or consecrated. But the "Ordo Sepeliendi Parvulos" contains no similar form, and the one in "De Exequiis" is so worded as to apply only to adults. Wbat should be done in these circumstances?*

A reply, J.R.C., 4 September, 1880, n. 3524, 1.2, directs that nothing at all is to be done beyond what the Ritual directs for the burial of infants:

"Quid de benedictione Sepulcri parvulorum? An scilicet in omni casu omittenda erit, sive parvuli sepeliantur in coemeterio iam antea benedicto, sive sepeliantur in coemeterio non prius benedicto; et si omitti non debet, quomodo talis benedictio facienda erit? *Resp.* Satis esse servare quae a Rituali Romano praescribuntur."

The reply appears, at first sight, to be in conflict with canon 1205, §1, which directs the bodies of the faithful to be placed in a blessed cemetery. But it may be noticed that the rubric n. 3 in *Ordo Sepeliendi Parvulos* provides for the blessing of the child's grave with holy water and incense, though there is no accompanying form of words; nor is there any rubric similar to that in *De Exequiis* directing the sprinkling and incensation to be omitted if the grave is already blessed. We can find no explanation of this, but it may conceivably be connected in some way with the rule of canon 1209, §5, that infants should be buried in a separate and special portion of the cemetery.

### **619.**—Ecclesiastical Burial of Non-Catholics

*A baptised non-Catholic husband of a Catholic wife has neither practised bis own religion nor expressed any desire to be a Catholic. He has attended Catholic senices occasionally with his wife. May be be given ecclesiastical burial including the Requiem Mass?*

It is our view that ecclesiastical burial, exclusive of the Requiem Mass, is not forbidden in the above circumstances by canon 1240, subject to the decision of the Ordinary if he can be reached.

The reason for this view, which is that of many canonists of repute, is that refusal of ecclesiastical burial is a punishment—*poena*—and the law is therefore to be interpreted in a liberal spirit. Moreover the law itself, as contained in the Code, is less severe than it was before, inasmuch as the heresy or schism in question has now to be "notorious". Thus Brys in *Collationes Brugenses,* 1925, p. 242: "ex eodem canonis contextu, apparet notorium esse debere cos adseriptos esse sectae vel schismaticae vel haereticae ut puta lutheranae, calvinistae, mcthodistac, anabaptistac etc. . . . Unde iam non solum delictum hacresis aut schismatis ut sic punitur privatione sepulturae ecclesiasticae, sed sola *notoria adseriptio alicui sectae".* Bestc in *Introductio ad Codicern,* 1946, p. 617: "Ergo non sufficit solum peccatum vel delictum hacresis ct schismatis neque merum factum adhaesionis sectae; sed requiritur ut delictum compleatur adseriptione sectae coiniuncta cum notorictatc." Cf. also Augustine, *Commentary on the Code,* VI, p. 154.

A reply of the Holy Office, 30 March, 1859, *Fontes,* n. 952, is also instructive: "Utrum acatholici ratione vinculi consanguinitatis, seu matrimonii, inferri licite possint in sepulchro gentilitio familiarum catholicarum? *Resp.* Curent Episcopi totis viribus ut cuncta fiant ad normam sacrorum canonum; quatenus vero absque scandalo et periculo id obtineri non possit, tolerari posse."

It by no means follows, from the above solution, that any non-Catholic, at the wish of the relatives, may be given ecclesiastical burial; it may certainly be forbidden owing to the notoriety of his adherence to a non-Catholic sect, or for any one of the additional reasons enumerated in canon 1239. The point to notice is that there is a rigid law forbidding the sacraments to all

who arc not in visible communion with the Church; but the law forbidding ecclesiastical burial is far less strict.

The Requiem Mass is forbidden, we think, from canon 2262, §2.2, since a funeral Mass *praesente cadavere* is obviously public.

### 620.—Graves of Non-Catholics

*May the non-Catholic party of a mixed marriage be buried in the same grave as the Catholic—*(1) *in a consecrated cemetery,* (2) *in a municipal cemetery where the grave alone is blessed?*

The solution of this question does not turn on whether the cemetery is consecrated, but on whether the Church is able, in a given case, to vindicate her rights. Nor does the consecration of the cemetery have any direct bearing on the problem. A Catholic cemetery is solemnly blessed (consecrated) with the rite in the *Pontificate Romanum*; it is blessed simply with the rite in the *PJtuate Romanum,* VIII, xxix and xxx. But in both cases it is constituted a sacred place, and from canon 1207 is subject to the same rules concerning violation as are churches.

(i) The Church has the right to own cemeteries[1] and the bodies of the faithful are to be buried therein after the ground has been blessed either solemnly or simply. Amongst other classes of persons to whom ecclesiastical burial is to be refused, canon 1240 includes "sectae hcrcticae notorie addicti", but it should be noted that §2 of this canon makes ample provision for doubtful cases: "Occurrente praedictis in casibus aliquo dubio, consulatur, si tempus sinat, Ordinarius; permanente dubio, cadaver sepulturae ecclesiasticae tradatur, ita tamen ut removeatur scandalum." Assuming, therefore, that there is no doubt that the deceased notoriously belonged to an heretical sect and gave no sign before death of desiring to belong to the Church, the interment cannot be permitted in a Catholic cemetery. Diocesan instructions frequendy direct that a clause must be inserted in the document affecting the sale of a grave, by which no right of burial may be claimed in favour of persons excluded by the law of the Church. The case of a mixed marriage is a frequent source of trouble and ill-feeling, and the priest would gladly do what is possible to avoid causing an added sorrow to relatives at a time of bereavement. But, supposing always that the right of the Church to exclude the bodies of certain deceased persons can be exercised, we can see no easy way out of the difficulty. In some cases it could be held that the exclusion was only doubtful, or the matter could be referred to the Ordinary for his decision. It is a positive law in question which *remoto scandalo* could be treated like any other positive law: its observance docs not bind with grave injury.

(ii) The right of the Church to own cemeteries is, however, frequendy violated by the civil authority. If a portion of a municipal cemetery is specially reserved for Catholics, it should be blessed, and the whole portion of blessed ground must be regarded exactly as though the Church owned it; that is to say, if the concession to Catholics grants the right of excluding those who are not canonically entided to interment therein, the right should

[1] Canon 1206, §1.

be exercised. There is no difference between this situation and the one already discussed.

But, if there is no Catholic portion, each grave is blessed singly. Supposing the non-Catholic party of a grave jointly owned predeceases the Catholic party, we can see no particular difficulty about blessing the grave, on the occasion of the Catholic's funeral, if it is granted that no blessed cemetery is available. This latter condition is of some importance, since the law requires Catholics to be buried in a blessed cemetery. Quite recently the Moly Office reprobated the practice of burying Catholics in non-Catholic cemeteries solely for family reasons: "Ex pietate erga acatholicos parentes, propinquos aut amicos aut ex alio fine honesto." The official commentary on this rescript remarks: "Unica exceptio in canone 1206, §5, habetur quando propter leges iniquas catholici sepelire debent in coemeteriis civilibus in quibus nullum spatium catholicis est reservatum et benedictum. . . . Hic vero casus in necessitate communi fundatus, ad coemeterium acatholicum propter rationes mere privatas pietatis aliusve causae honestae extendi non potest."[1]

Supposing, finally, that the Catholic predeceases the non-Catholic, we can see no particular difficulty about blessing the grave at the funeral of the former, except the considerations already discussed in the preceding paragraph. Cases of this kind usually occur in a locality which possesses no Catholic cemetery and no portion of a municipal one; but if there is any doubt in the priest's mind concerning his obligations he should refer the matter to the Ordinary.

### **621.—** Burial in Non-Catholic Cemetery

*The Catholic wife of a mixed marriage died and her husband insisted on her being interred in the cemetery attached to the local Anglican church. The parish priest protested in vain, and then, bowing to the inevitable, performed the funeral rites at the grave. Was this correct?*

A private reply of the Holy Office, 15 February, 1936, *Periodica,* 1937, p. 467, declares that family affection is not a sufficient reason justifying the burial of a Catholic in a non-Catholic cemetery. The circumstances above narrated arc not merely family affection, but a resolute refusal on the part of the husband to permit his wife to be buried according to the normal law of the Church, as contained in canon 1205, §1 : "Cadavera fidelium sepelienda sunt in coemeterio quod, secundum ritus in probatis liturgicis libris traditos, sit benedictum, sive solemni sive simplici benedictione ab iis data de quibus in cann. 1155, 1156." The situation is that, morally speaking, no blessed cemetery is available, and the official commentator on the rescript remarks: "Unica exceptio in canone 1206, §3, habetur quando propter leges iniquas catholici sepelire debent in coemeteriis civilibus in quibus nullum spatium catholicis est reservatum ct benedictum. In hoc casu singuli tumuli toties quoties benedici possunt ct debent et sepultura ritu catholico et per ministrum catholicum fit." The above case can be brought within this commentary, inasmuch as our civil laws permit the executor to dispose of the body as he secs fit, unless the last will of the deceased contains other directions.

[1] Reply to the Bishop of Olrnutz, 13 February, 1937; *Periodica,* 1937, p. 467.

In places which have no Catholic cemetery, and no portion in a municipal one, a priest has no choice but to bury the dead in the ground attached to the Protestant church. In these exceptional contingencies custom, no doubt, establishes the lawfulness of the rite being performed by a priest at the grave.

The objection to the practice is manifest, but often unavoidable, and a priest should refer the matter to the Ordinary if there is any doubt in his mind concerning lais obligations. Without in any way suggesting what the Ordinary's decision should be, we think that the parish priest acted corrccdy in the above case, not solely in order to avoid the attendance of a non-Catholic minister, but simply to carry out the Catholic rite as far as the circumstances allowed.

### 622.—Municipal Cemeteries

*In a public cemetery owned by the civil authority is it lawful to allow, in extra-ordinary cases, non-Catholics, and by non-Catholic ministers, to be buried in the Catholic portion?*

*Where the graves are blessed separately is there any question of desecration arising or of incurring interdict?*

Canon 1206, §2: Sicubi hoc Ecclesiae ius violetur nec spes sit ut violatio reparetur, curent locorum Ordinarii ut coemeteria, societatis civilis propria, benedicantur, si, qui in eis condi solent, sint maiore cx parte catholici, aut saltem ut in eis catholici spatium habeant, idque benedictum, sibi reservatum. §3. Si ne hoc quidem obtineri possit, toties quoties benedicantur, secundum ritus in probatis liturgicis libris traditos, singuli tumuli.

Canon 1206 states the right of the Church to possess its own cemeteries. They are consecrated, or at least blessed, and arc therefore sacred places, as declared in canon 1154, exempt from the jurisdiction of civil authority. These ecclesiastical rights may often be unrecognized or violated by the state, but the rights remain. In the somewhat new situation created by municipal cemeteries, in which Catholics may or may not have a portion assigned to them, the Church vindicates its rights as far as is possible in the circumstances.

In the case where the whole cemetery is blessed, because the majority to be buried within it are Catholics, it is implied in §2 that the burial of non-Catholics must be tolerated, and that this act docs not violate the cemetery, which it certainly might do in the instances given in canon 1172, §1, n. 4 (sepultura infidelis vel excommunicati post sententiam declaratoriam vel condenmatoriam), since the canons concerning the violation of churches apply also to cemeteries from canon 1207. The conclusion that, in these exceptional cases, the cemetery is not violated is drawn by many commentators.1 The situation is often regulated by diocesan law. Thus we read in the *Malines Statutes,* 1924, n. 560: "Quodsi magistratus civilis in terra sancta condi juberet cadaver illius qui sepultura ecclesiastica ex jure privari debet, parochus ministerium suum deneget; sed coemeterium violatum non declaret, quin prius totam rem ad Nos deferat."

1 Cf. *Collectanea Mccblinitnsia,* 1937, p. 507; *Irish Ecclesiastical Record,* June 1937, p. 630.

What has been decided for the whole cemetery will apply to that portion which has been allocated to Catholics. The Catholic authorities will do their best to prevent the burial of non-Catholics, and by non-Catholic ministers, therein, but such burials will not, in our view, cause the portion of the cemetery to be violated.

Unless the right of excluding non-Catholics can be secured, there seems to be little advantage in having a Catholic portion specially blessed for the use of Catholics. The procedure is then, according to canon 1206, §3, to bless the graves singly, nor does any question of violation or interdict then arise.

### 623.— Unbaptized Infants

*Is there any authority for the view that the unbapti^ed infants of Catholic parents way, in certain circumstances, be given ecclesiastical burial?*

Canon 1239, §1: Ad sepulturam ecclesiasticam non sunt admittendi qui sine baptismo decesserint.

*Ordo Administrandi Sacramenta,* VI, ii, 7 (Negatur igitur ecclesiastica sepultura) infantibus mortuis absque baptismo. A similar text expressly excluding unbaptized children was found in the older *Rituale Romanum,* but the rubric in the current *editio typica,* VI, cap ii, repeats the law as found in canons 1239 and 1240.

(i) It is painful for a priest to refuse ecclesiastical burial to an unbaptized child of Catholic parents, but there can be no doubt whatever that he is acting correctly; the body must be buried in unblessed ground as provided for in canon 1212: "Praeter coemeterium benedictum alius, si haberi queat, sit locus, clausus item et custoditus, ubi ii humentur quibus sepultura ecclesiastica non conceditur."

The question is fully discussed in *Apollinaris,* 1931, p. 128, and the reasons for the prohibition are examined. Ecclesiastical burial is amongst the acts which proclaim an individual to have been incorporated in the Church. Canon 1239 permits the burial of unbaptized catechumens because they may be presumed to have baptism of desire, which for infants is not possible except by a miracle. Moreover, the non-observance of the law, even from motives of pity, is likely to cause scandal: it would encourage disbelief in the doctrine of original sin and the necessity of baptism; negligent parents would be encouraged to delay unduly the baptism of their children, and ill-disposed persons would be inclined to suspect that ecclesiastical burial is being conceded for the sake of the stole fees. The prayers of the rite itself arc clearly inapplicable in the case of unbaptized children, referring as they do to the fact of baptized children enjoying the vision of God.

Our correspondent quotes a modern writer of great authority as teaching the contrary, but we find that later editions of his work contain a correction of the passage; and, even in the original text, it is not unlikely that he had in mind the exception wc arc about to discuss.

(ii) An exception allowed by prc-Codc authors, and adopted by many commentators on the Code, refers to the case where the mother as well as the unbaptized child died at birth. It is maintained, and we think quite correctly, that the custom of burying the child with its mother is not to be

disturbed. This decision is accepted as certain by all the writers, if the child died with its mother before birth. If it died immediately after being born, some apply the law quite strictly and teach that it must be buried apart from the mother in unconsecrated ground,[1] and where the local law explicitly directs this to be done, in such cases, there is no loophole of escape. But, in explaining the common law, a number of writers maintain that this situation is practically equivalent to the case of a child dying with its mother before birth.[2] On the supposition that the child is being buried with its mother, and that the special rite for infants is not being used, we think that this is a reasonable solution which may be adopted in all places where there is no express prohibition to the contrary.

(iii) In other cases any suitable prayers may be said for the consolation of the relatives, but it is forbidden to employ the burial form for infants given in the ritual; it is equally forbidden to inter the body in consecrated ground.

We cannot find any writer in support of this view that some prayers of a general character may be said at the graveside. It is an act of charity which one is anxious, if possible, to perform, if it can be justified without sacrificing any principle or violating any grave law. The law is not violated, for what is forbidden is "sepultura ecclesiastica" as defined in canon 1204: ". . . consistit in cadaveris translatione ad ecclesiam, excquiis super illud in eadem celebratis, illius depositione in loco legitime deputato fidelibus defunctis condendis". For baptized infants the Church has provided a special and very striking rite, which certainly cannot be used even in part, since the prayers and the whole sentiment are inapplicable to the unbaptized. But there is no law against saying prayers for the comfort of the living in any place, including the ground set apart for the burial of the unbaptized. The prayers could be the *Pater Noster,* a decade of the rosary, or a choice of psalms expressing resignation to the will of God, e.g. Ps. xxxii. Such prayers may be said unless the priest's presence is forbidden by local law.

Is there any principle at stake? There certainly is if the impression is created that the infant is being buried with ecclesiastical rites, as though it were a member of the Church. An analogy may be perceived with the prohibition of Mass after a mixed marriage; the *Code Commission,* 10 November, 1925, supporting the law of canon 1102, §2, forbade even a private Mass "si haec Missa ex rerum adiunctis haberi possit uti complementum caeremoniae matrimonialis".

Therefore, if prayers arc said by the priest on these occasions at the graveside, the possibility of scandal must be removed, which can usually be done by a few words addressed to those present.

### 624.— Cremation

*Is it permitted to give ecclesiastical burial to the cremated remains of a Catholic in the case where the cremation was carried out by the relatives and was not desired or directed by tbe deceased?*

Canon 1203, in directing that the bodies of the faithful are to be buried,

[1] E.g. Bcstc, *Introductio in Codicem,* p. 61j.
[2] E.g. Brys in *Collai. Bragin.,* 1925, p. 161; Tummolo-Iorio, *Tbeol. Moralis,* II, n. ion.

declares that it is unlawful to carry out the wishes of a deceased person, who may have desired cremation, and that any directions to that effect in the will of the deceased are considered not to exist, "tanquam non adiecta habeatur". From canon 1240, §1, n. 5, those who have directed that their bodies should be cremated arc to be refused ecclesiastical burial unless, before dying, they had given some signs of repentance. It is clear, therefore, that what the Church has chiefly in mind, in refusing ecclesiastical rites, is the misguided intention of the deceased person. This is made still more clear from a rather severe decision of the *Code Commission,* 10 November, 1925, x, directing that persons who have given orders for their bodies to be cremated are to be deprived of ecclesiastical burial, even though the cremation did not actually take place.

The only point, therefore, to be considered in the above case is the matter of scandal. It is evident that the public, knowing that cremation is forbidden, will be most perplexed at witnessing ecclesiastical rites either before or after the cremation. An instruction of the Holy Office, 19 June, 1926, recalling a previous decree of 15 December, 1886, deals with this situation and formulates the rule that, unless all scandal can be efficaciously removed, ecclesiastical burial is to be refused. In many cases scandal can easily be removed by a public declaration of the facts. The onus of proof concerning the deceased's intentions, and of efficaciously removing scandal, rests with those who desire ecclesiastical rites. The instruction of 1926, amongst other things, restates what is sometimes forgotten, namely that the cremation of bodies is not intrinsically wrong and may be permitted, in extraordinary circumstances, for grave reasons of public welfare. An example of such circumstances would be times of pestilence, when it is judged that cremation is essential for preventing the spread of infection.

### **625.**—Preservation of Deceased Person's Heart

*One hears occasionally of directions in a person s will to the effect that the heart of the deceased shall be deposited in some place or institution other than the place of burial. Is this permitted?*

*S.R.C.,* ii February', 1898, n. 5982: Quum in Archidioccesi Sancti Jacobi de Cilc aliquando contingat ut, mortuis Episcopis aliisque praedaris sacerdotibus, cor eorum extrahatur et honorifice servetur in domo vel pio loco ab ipsis fundatis vel praedilcctis; atque conservatio ita fiat ut claudatur cor in ampulla vitrea, in visibili loco et inter flores ordinarie collocatur; quaeritur: potestne haec praxis continuari? *Resp.* Affirmative; dummodo descripta conservatio cordis non fiat in loco sacro.

An example of this practice is the case of Cardinal Bourne, buried at St Edmund's College, whose heart is deposited at St John's Seminary, Wonersh. Cf. *The Tablet,* 11 May, 1955, p. 605. In the past it was very common. Brady, *Annals of the Catholic Hierarchy,* p. 161, gives the inscription placed over the heart of Bishop Bonaventure Giffard, which was buried in the chapel of Douay College in the choir near the sanctuary. The words "non fiat in loco sacro" refer to publicly exposing the heart in a sacred place, a prohibition which has in mind the possibility of the object being popularly treated as the relic of a saint.

## §6. TEXTUAL DIFFICULTIES

### 626.— Sign of the Cross

*"In the name of the Father, Son and Holy Ghost, Amen" is the formula one often hears. Could it not be said that this is not only slovenly but doctrinally unsound?*

There are some slight divergencies in the directions given for making the sign of the Cross, interpreting *Rit. Celebr. Miss.,* III, 4 and 5.[1] But there is no dispute about the correct form of words, which must include the repetition of the conjunction, the preposition and the article as in Matthew xxviii, 19.

Liturgical rites, even of the most minute kind, often express some doctrine. It is not surprising, therefore, to find that the use of one finger in making the sign—in itself an indifferent action—was introduced by the Monophysites to symbolize their teaching about the oneness of Christ's nature. The above truncated formula could, no doubt, be construed as a profession of Sabellianism, though we have found no evidence that it was so used, and it is unlikely that heretics would deliberately modify a plain scriptural text. It is still less likely that Catholics truncate the words for any other reason except carelessness and slovenliness arising from familiarity and constant repetition. The practice should be carefully corrected.

### 627.— "Sicut erat in Principio"

*It is clear enough in our English rendering "as it was in the beginning" that the subject of "erat" is either "gloria" or the whole of the preceding phrase. In French renderings the masculine is given "comme il était au commencement" and the Latin itself is capable of a translation which makes the subject of "erat" one of the Divine Persons. What is the exact meaning to be given to these words?*

Dr Fortescue in *The Mass,* p. 217, n. 4, and again in the article "Doxology" of *The Catholic Encyclopedia,* gives the commonly received account of the history of the Latin doxology. The Latin form was originally the same as the Greek, omitting "sicut erat in principio". Canon V of the Second Synod of Vaison (Avignon Province), 529, ordered the words to be inserted, as used in Rome and Africa. The synod was in error in saying that the words were used throughout the East. This is not so, and our addition of the words was one of the minor complaints made by Eastern theologians against us. According to the synod the words were to be used as a protest against Arianism, and the subject of *erat,* therefore, was originally understood to be *Filius. In principio* is an allusion to the first words of St John's Gospel. Everyone now understands the phrase in the sense that the subject of *erat* is *gloria* or the whole of the preceding phrase, and this is found in the modern vernacular versions, c.g. in German "wie *es* war im anfang"; some mediaeval German versions read "wie *er* war im anfang". The use of "il" in French

[1] Cf. *Ecclesiastical Retiens* February 1941, p. 159.

cannot be taken as an instance of the primitive sense of the phrase. It is equivalent to the demonstrative pronoun *cela.* Cf. *PAmi du Clergi,* 1929, p. 128; 1947, P· <>97·

## 628.—Te Deum

*In tbe strophe beginning "Aeterna Fac", is there any good authority for stating that tbe primitive text read "munerari" instead of "numerari"?*

It is admitted that the primitive reading was very probably "gloria munerari" instead of, as we now have it, "in gloria numerari". H. T. Henry writing on the subject in the *Catholic Encyclopedia,* XIV, p. 469, discusses this and other variant readings in the hymn. "In gloria numerari" is found in a twelfth-century manuscript, but nearly all the manuscripts have the other reading. It is suggested that the reading we now have was influenced by the text in the Canon of the Mass "jubeas grege numerari". A history of the hymn in *Ephemerides Eiturgicae,* p. 25, affirms the primitive reading to be "munerari".

## 629.—Canon of the Mass

*What is the meaning or origin of* (z) *the plurality of "Amen" throughout', (fi) "pro quibus tibi offerimus vel qui tibi offerunt"; (fii) "Infra Actionem"?*

Amongst the many studies of the Roman Canon, that by Dom Bernard Botte, O.S.B., published at Louvain (Abbaye de Mont César), 1955, is strongly recommended for its completeness, lucidity and brevity. Within the limits of only 70 pages he gives the text of the Gregorian Canon (which, but for the slightest variations, is that of the current Missal), with the probable sources of the text printed in full on the opposite page, and with footnotes of the manuscript variations. There follow twenty-three succinct notes explaining difficulties and referring the reader to the best and most recent literature. Relying largely on this commentary, the explanation of the points raised is:

(i) The Gregorian Canon had only one *Amen.* The other four, chiefly through Gallican influences, were added from the ninth century onwards, probably because in the popular mind the words *Per Christum Dominum Nostrum,* wherever they occurred, seemed to call for this addition. Cf. *Theological Studies,* 1945, p. 380.

(ii) *Pro quibus tibi offerimus vcl:* these words arc not in the Gregorian Canon, which reads more smoothly, perhaps, without them. They· appear about the beginning of the tenth century, and arc usually attributed to the fact that the faithful were then ceasing to take an active part in the offertory. Botte, *op. cit.,* p. 5 5.

(iii) *Infra actionem:* the *Communicantes* used to vary even more than it docs in the current missal. The variation was printed among the prefaces with the direction "infra actionem", which came to be regarded, superfluously, as the title of the prayer *Communicantes.* Fortescue, *The Mass,*

### 630.—The Pater Noster "Amen"

*Some missals indicate that the "Amen" of the Pater Noster at Mass is to be said by the priest "submissa voce'', others direct it io be said"secrete". Which is tbe more correct?*

The correct rubric is that which is found in all missals printed at least since the 1920 typical edition: "Sacerdos secrete dicit: *Amen."* Previous to this date "secrete" is found in some editions and "submissa voce" in others. It is a small point which seems to have escaped the attention of those commentators on the typical edition to whom we have been able to refer.

The reason for the direction "submissa voce" is, we suppose, the fact that in a high Mass the choir is singing *Amen* at the same time. Tit. XVI, n. 3 of the *Rjtbricae Generales* directs "Alia quae in Missa privata dicuntur clara voce, in Missa solemni a celebrante dicuntur submissa voce". The later direction to say the word "secrete" is a further interpretation of the same principle; in fact, it would seem that the practice of saying the whole of the Canon "secrete" originated with the natural desire of the celebrant to continue the Eucharistic Prayer while the Sanctus was being sung. The difference between the two voices is that "secrete" means a tone of voice which can be heard by the priest but not by those standing around; "submissa voce" means a tone which can be heard by the ministers and servers but not by the whole congregation.

### 631.—Sung Passion according to Saint Mark

*Is it correctfor the words "Ave Rex Judaeorum" to be given to the "Chronista" in the Passion which is sung on the Tuesday in Holy Week? On Palm Sunday and Good Friday these words are sung by the "Synagoga".*

Previous to the text of the missal issued by Pius \r in 1570, the variations to be found in different uses were considerable, and this was particularly so in the signs inserted throughout the four accounts of the Passion in Holy Week. From an article by Dom Joseph Krcps in *Questions Ldturgiques et Paroissiales,* 1923, p. 3, it is clear that they were originally signs for the guidance of the singer in days when the Passion was sung by one deacon. The variations of these signs in different manuscripts he describes as baffling (déroutant).

In the first printed missal, 1474, published by H.B.S., Vol. XVII, 1899, spaces were left for the signs to be added in manuscript, in order, we suppose, that each purchaser of the missal might insert those desired. The H.B.S. editor, however, as explained in a footnote to p. 136, inserted the signs to which we arc accustomed. On Tuesday in Holy Week, in the space before the words "Ave Rex ludaeorum" (p. 147) the editor inserted "C", but since the whole of the preceding passage is assigned to "C" it would seem that "S" should have been inserted, and "C" resumed in the space before "Et percutiebant".

An examination we have made of the available missals, supplemented by the kind assistance of two monastic librarians, reveals that the passage is

given to "S" in the following copies: Norwich Manuscript, fifteenth century; Antwerp, 1574; Paris, 1583. Two Sarum missals, Paris 1515, give the passage to "A" (Alto) which is the equivalent of "S".

All the rest examined give no assignation, that is to say the passage belongs to "C" as in our current missals: Venice , 1571; Paris, 1583; Venice, 1585; Antwerp, 1614, 1631 and 1682; Paris, 1701; Malines, 1789; Rome, 1846.

Unless some more satisfactory explanation is forthcoming, our suggestion is that the omission of "S" in this place began, perhaps by error, in the missal of Pius V, 1570, and has continued thus, with the exception of a couple of late sixteenth-century missals, because printers were obliged to follow the typical edition from Pius V onwards.

### 632.—Requiem Introit

*Many missals give* ***IV*** *Esdras ii,* 34-5, *as the basis of the Introit text. Since this book is not in the Donay Bible, it would be useful to have tbe reference.*

IV Esdras ii, 34-5: Ideoque (ego Esdras) vobis dico, gentes quae auditis, et intelligitis: Expectatc pastorem vestrum, requiem aeternitatis dabit vobis, quoniam in proximo est ille, qui in fine saeculi adveniet. Parati estote ad praemia regni, quia lux perpetua lucebit vobis per aeternitatem temporis.

Ill and IV Esdras, together with the prayer of Manasses, though not in the Douay version, arc usually given at the end of the Vulgate with an explanatory note, as in the Fillion edition: "Oratio Manassae, necnon libri duo qui sub libri tertii et quarti Esdrac nomine circumferuntur, hoc in loco, extra scilicet seriem canonicorum librorum, quos Sancta Tridentina Synodus suscepit, et pro canonicis suscipiendos decrevit, sepositi sunt, ne prorsus interirent, quippe qui a nonnullis sanctis patribus interdum citantur, et in aliquibus Bibliis latinis tam manuscriptis quam impressis reperiuntur."

As in other liturgical texts taken from a biblical source, for example the reference to Tobias xii, 6, at the Trinity Sunday Introit, the sacred text provides the idea or the basis of the liturgical use, and the whole of this chapter II of IV Esdras is easily applicable to the liturgy of the dead. The Lord speaking to Esdras (vv. 1-32) encourages him with divine promises: ". . . dabo eis tabernacula aeterna, quae praeparaveram illis. Lignum vitae erit illis in odore unguenti, et non laborabunt, neque fatigabuntur. . . . Et resuscitabo mortuos de locis suis, et de monumentis educam illos. . . . Mortuos ubi inveneris, signans commenda sepulcro, et dabo tibi primam sessionem in resurrectione mea. Pausa ct quiesce, populus meus, quia veniet requies tua." Following upon the words of Esdras given above we arc given his vision of Sion: "Hi sunt qui mortalem tunicam deposuerunt, ct immortalem sumpserunt, ct confessi sunt nomen Domini; modo coronantur ct accipiunt palmas. Et dixi angelo: Ille iuvenis quis est, qui cis coronas imponit, ct palmas in manus tradit? Et respondens dixit mihi: Ipse est filius Dei, quem in sacculo confessi sunt. . . ."

The books of Esdras and Nchcmias arc usually referred to by us as I and II Esdras, whereas by I and II Esdras non-Catholics mean the Apocryphal III and IV Esdras.

### 633.—"Pro Patre et Matre"

*When should the alternative plural "nostri" and "nos" be used in this prayer which is amongst the "Orationes diversae pro defunctis" in the missal?*

The prayers nn. 11-13 in the current missal were formerly nn. 7 and 8 in missals printed before 1920. They used to bear the title "Pro patre et matre sacerdotis" whereas the title is now "Pro patre et matre", "Pro patre tantum", "Pro matre tantum". Apart from a reference in *PAmi du Clergé,* 1927, p. 333, which gives an example of the use of the plural, namely, when the priest has a brother or sister, I can find no explicit information on the point. It is clear enough from the wording of these prayers that they cannot be used if the priest is praying exclusively for the parents of some other person. But apart from this obvious exception, there seems to be no reason why the plural should not be used whenever the priest has a brother or sister alive, even though neither of them is present in the church. It could also be used, for example, in a Mass which is being said for the parents of all who arc present, the parents of the priest being included. The omission of the restriction "sacerdotis" in the title of the prayer undoubtedly is meant to extend its application.

### 634.—The Nuptial Blessing

IPTw/ *is the force of the word "ideo" occurring at the beginning of the prayer "Deus qui potestate", and what is the correct translation of the phrase?*

*Missa votiva pro Sponso et Sponsa:* Deus, qui potestate virtutis tuae de nihilo cuncta fecisti: qui dispositis universitatis exordiis, homini, ad imaginem Dei facto, ideo inseparabile mulieris adiutorium condidisti, ut femineo corpori de virili dares carne principium, docens, quod ex uno placuisset institui, nunquam licere disiungi. . . .

The difficulty of the present reading *ideo* is that the phrase seems to reverse the real order of means and end, and to say that the purpose for which God gave woman to man as an inseparable helpmate was that He might form the body of the first woman from that of the first man, which scarcely makes sense. The simplest solution is to suppose that *ideo* should be *adeo,* and the context lends support to this reading, for the construction of the following sentence in the same prayer is evidently consecutive: "Deus, qui tam excellenti mysterio coniugalem copulam consecrasti, ut Christi et Ecclesiae sacramentum praesignares in foedere nuptiarum . . It is legitimate to assume that in the previous sentence, also, especially as the sense of purpose is difficult to understand, the meaning is likewise consecutive.

Unfortunately we can find no other reading except *ideo* in all the ancient texts consulted, e.g. *Gregorian Sacramentary* (Muratori, p. 245); *Missale Westmonast.* (H.B.S., Vol. XII, col. 1241); *Missale Romanam* 1474 (H.B.S., Vol. XXXIII, p. 521).

Amongst the many English versions examined, all of which translate *ideo* as though it were *adeo,* that supplied by the C.T.S. seems the best:

". . . who didst create woman a helpmate so inseparable, that out of man's flesh Thou didst give to the body of woman its first beginning, teaching thereby. . . ".

Mr. H. P. R. Finberg suggests[1] that *ideo* is not a misprint for *adeo,* and that it does imply a "sense of purpose". The purpose is expressed in the clause: "docens . . . numquam Licere disjungi". That is to say, God gave man a helpmate, and made the helpmate inseparable from him, flesh of his flesh, in order to show in the plainest possible fashion that any divorce between them would be unlawful. Had the grammar of the Latin sentence corresponded with its logic, the construction would have been: "ideo inseparabile mulieris adjutorium condidisti, femineo corpori de virili dans carne principium, ut doceres . . . numquam licere disjungi." As it is, the subjunctive and the participle have changed places by hypallage,[2] and we now have "dares . . . docens". If this is correct, the translation would read perhaps as follows: ". . . didst bestow upon him an inseparable helpmate, fashioning woman's body out of his very flesh, and thereby teaching us that it is never lawful", etc.

*When one nuptial Mass is serving for the blessing of more than one marriage, should the prayers for the blessing be changed to the plural?*

*Rituale Rjomanum,* VII, ii, 5: Quando plures simul copulantur, accepto primum singulorum consensu, et rite celebratis singulis matrimoniis, dictoque pro singulis *Ego contango vos in matrimonium,* etc., benedictiones anulorum et reliquae benedictiones plurali numero semel fiunt.

*S.Off.,* r September, 1841 ; *Collectanea S. C. Prop.,* n. 15 53, ad 4: In eadem Missa posse sacerdotem plurcs sponsos benedicere.

J'.R.G, 3 March, 1936; *Ephemerides Eitnrgicae* (Ius et Praxis), 1937, p. 152: In una cademque Missa pro Sponsis plurcs nuptiae simul benedicendae sunt. In Missa pro Sponsis hoc in casu, si plurcs nuptiae simul benedicendae sunt, dicunturne orationes pro benedictione Sponsae, prout sunt in Missali Romano, semper singulari numero, an dicendae sunt in numero plurali? *Resp.* Nihil innovetur.

The direction "Nihil innovetur" seems to imply that the blessing is to be given in the singular, as it stands in the missal, even when it is applied to more than one couple, and some commentators understand it in this sense, as *Revue Eucharistique du Clergé* (Canada), July, 1946, n. 7. *Ephemerides Litnrgicae* (lus et Praxis), 1941, p. 136, takes, however, the opposite view, giving the whole formula of the first prayer in the plural with "ambo" in the last sentence changed to "omnes". No comment is made upon *S.R.C.,* } March, 1936; "nihil innovetur" is not very decisive, and we think this opinion of the *Ephemerides Eiturgicae* may safely be followed.

[1] *Pbe Clergy Review, 1947,* XXVII, p. 431.

[2] The interchange of cases, or the attraction of one word to another, e.g. the Virgilian "dare classibus Austros" for "dare classes Austris"; or in the Canon "ex hac altaris participatione" for "ex huius altaris participatione".

*The celebrant, being unaccustomed to this function, forgets to give the blessing after the "Pater noster". Should he supply this omission as soon as he remembers, or wait till the end of the Mass?*

There are no official directions on the point, and one way out of the difficulty, if the priest enjoys the induit, would be to give the nuptial blessing with the short form for use *extra Missam.* Seeing, however, that the votive Mass is not permitted unless the blessing, as in the Missal, accompanies it, we think that the two prayers which should have been said after the *Pater noster* should be said after *Benedicamus Domino* before the formula *Deus Abraham.* For this formula is the complement of the preceding prayers, and it is reasonable to insert them at this place. It would be wrong, we think, to interrupt the action of the Mass from *Pater noster* to the Postcommunion, in order to supply the omission.

### 635.— Asperges "Miserere"

*May the celebrant recite additional verses of the "Miserere" if time permits when performing this function in a large church?*

*Rituale Romanum* (Benedictiones non reservatae, I): Interim Celebrans aspergit clerum, deinde populum, dicens submissa voce cum ministris Psalmum *Miserere mei Deus.*

*S.R.C.,* 31 July, 1665, n. 1322.12: Celebrans aspergens populum aqua benedicta associari debet a Diacono et Subdiacono et Ministris Altaris, et recitare Psalmum *Miserere,* ad formam Rubr. Ritualis tit. de Benedict.

It is clear from these rubrics that the celebrant not only may but ought to recite the additional verses of the psalm whilst sprinkling the people. He does this in a subdued voice owing to the chant being sung by the choir. A similar rubric is in the Roman missal. A writer in *Ephemerides Liturgicae,* 1925, p. 278, holds that this recitation of the psalm is not of obligation, "hoc a nulla praecipitur rubrica", but it is difficult to sec what else is prescribed by the clear directions of the ritual and missal. Cf. O'Connell, *The Celebration of Mass,* III, p. 9; Fortescuc-O'Connell, *The Ceremonies of the "Raman Rite Described,* p. 8r; Lane, *Notes on Some Ceremonies of the Roman Rite,* p. 23; Augustine, *Liturgical Law,* p. 221; Vavasseur, *Cérémonial de Paroisse,* p. 58; De Hcrdt, *Sacrae Liturgiae Praxis,* III, §133. These writers all direct that the celebrant should recite the *Miserere* as far as time permits, and we think this to be correct.

The choir, however, must follow the clear directions of the Gradual, singing *Gloria Patri* immediately after the first verse of the *Miserere.*

### 636.— Confirmation by a Priest

*Texts of the rite for extraordinary ministers are in circulation which differ, in some particulars, from that in the "Acta Apostolicae Sedis." Which text should one follow?*

Apart from the rubrics, which are adapted to the purpose of the decree, *Spiritus Sancti Munera,* 14 September, 1946, the text of the prayers and other

forms is substantially identical with the text in the Appendix to the Roman ritual. In three instances, however, the text originally published with the decree in *A.A.S.*, 1946, XXXVIII, p. 354, varies from that in the ritual: *(a)* the cross is omitted at the word "crucis" in the prayer *Adimple·, (b)* "Amen" is omitted in the same prayer; (r) "omnis" is omitted in the penultimate formula *Ecce sic benedicetur.*

Mgr Zerba's commentary gives the text with a reference to *A.A.S.*-, it supplies each of the omissions (tf), (£) and *(c).*

Another commentary by Canon Pistoni prints the text exactly as it is in the *Acta Apostolicae Sedis* with the three omissions.

A separate Vatican Press edition of the text of the decree, which we have not seen, supplies at least one of the omissions, and some reprints appear to be based on this scpaiate issue, e.g. that in *The Jurist,* 1947, p. 2x9.

The probable explanation is that the original text, as printed in *A.A.S.,* is defective, though the three omissions are not patently typographical errors. In our opinion, however, until any errors are officially corrected, we should use the text issued at the time of its promulgation in *A.A.S.* This is the text printed with the omissions by Burns Oates & Washbourne in a folium for insertion in the *Ordo Administrandi.*

## 637.—"Dominus Meus et Deus Meus"

*Is it necessary, for gaining the indulgence attached to this invocation at the elevation, to say the words vocally and to look upon the Host?*

*Preces et Pia Opera* 61929), n. 6o: Fidelibus, qui fide, pietate et amore sacratissimam Hostiam adspcxcrint, cum in Missae sacrificio elevatur, vel dum manet solemniter exposita, et praefatam jaculatoriam precem recitaverint, conceditur: *Indulgentia septem annonem totidemque quadragenarum. Indulgentia plenaria* suctis conditionibus semel in hebdomada, si supra relata praxis quotidie habita fuerit (Pius X, Rcscr. *Manu Propr.,* 18 Maii, 1907, exhib. 12 Jun., 1907; S. Poen. Ap., 21 Jun., 1927).

J.R.C., 6 November, 1925, ad 1; *A.A.S.,* 1926, p. 21 : Summus Pontifex sa.me. die 18 Maii 1907 indulgentias christifidelibus concessit qui devote sacram Hostiam adspexerint cum in Missae sacrificio elevatur, additis in ipsa oculorum clavationc verbis "Dominus meus et Deus meus". Hinc quaeritur: 1. An fideles Missae adstantes, in sacrae Hostiae elevatione, clara et elata voce verba "Dominus meus et Deus meus" proferre possint? An etiam ad Calicis elevationem? 2. An ipse celebrans idem agere valeat submissa tamen voce? *Ikesp.* Quoad primam partem, negative in omnibus, ad mentem Cacremonialis Episcoporum, lib. II, cap. viii, n. 70, et Decreti generalis n. 3827 ad III, dici 22 Maii 1934. Quoad secundam partem, negative, iuxta canoncm 818 Codicis iuris canonici et Rubricas Missalis Romani.

J. *Poenit.,* 7 December, 1933; *A.A.S.,* XXVI, p. 35: An indulgentiae, invocationibus et precibus sic dictis iaculatoriis annexae, acquiri possint, ceteris paribus, a fidelibus quibuslibet etiam per mentalem tantum earum recitationem? *Rssp.* Affirmative.

*Preces et Pia Opera* (1938), n. 107: Fidelibus, qui, cum in Missae sacrificio sacratissima Hostia elevatur, vel dum ipsa manet solemniter exposita,

praefatam jaculatoriam precem fide, pietate et amore recitaverint, conceditur: *Indulgentia* septem annorum; *Indulgentia plenaria* semel in hebdomada, si praefata pia praxis quotidie habita fuerit, additis sacramcntali confessione, sacra Communione et oratione ad mentem Summi Pontificis. (References as in 1929 edition; also *S. Poenif., z6* January, 1937.)

The above texts illustrate the difficulties likely to arise when any modification is introduced into the liturgy of the Mass, and they arc also a good example of the changes to which all indulgences are subject.

(i) The answer to the first query is that mental recitation of this invocation now suffices both for the celebrant and for those assisting at Mass; the assistants may, if they wish, recite the words vocally in a very low voice, but the celebrant may not do this: he must be content with a mental prayer. The 1938 *Preces et Pia Opera* retains the word "recitaverint", but the ruling of 7 December, 1933, is given on p. xv of the Introduction, explanatory of canon 934, §r, of which it is in some degree a modification. Liturgical rules, as recalled in the authorities given in the reply, 6 December, 1925, require silence on the part of cantors and others during the elevation, and forbid any external additions on the part of the celebrant. He is not, however, forbidden a mental ejaculation at this point, although the rubrics of the current missal make no reference to it. Cf. *Ephemerides Ldtargicae,* 1926, p· 5i·

(ii) Up to 1938 it was necessary for the faithful to look upon the Sacred Host, and it would appear, indeed, that the indulgence was given in the first instance precisely in order to encourage them to do so. That this used to be a necessary condition for people with sight is evident from the note attached to *Preces et Pia Opera* (1929), n. *Go:* "Easdem indulgentias suetis conditionibus lucrari possunt caeci, iaculatoriam tantum precem iisdem in adiunctis recitantes *(S.C.S.* Officii, 9 Mail, 1912)."

All reference to this action of looking on the Host is lacking, however, in the *Preces et Pia Opera* (1938), η. 107, and it is altogether unlikely that the omission is due to an oversight. The reason for this modification may be to allow the faithful to gain the indulgence when the celebrant cannot be seen from their place in the church, or when the celebrant does not sufficiently elevate the Host.

(iii) A further difference between the two editions of *Preces et Pia Opera* is in the way the conditions are formulated, but there is actually little difference in the substance of what is required. The term "suetis conditionibus" includes, since 1929, a visit to a church, whereas before that date this was not so. In accordance with the rule in *Praenotandum* 4 of the *Preces et Pia Opera* the conditions for the indulgence in n. 107 are set out in full because a visit to a church is no longer necessary. The quarantains arc omitted in the 1938 text since they arc also omitted from every other indulgence in the book; the term—probably denoting a forty days' fast—was never very clearly defined in reference to modern indulgences.

### 638.—"Triplex Machina"

*What is the meaning of "triplex machina" in the last verse of the breviary hymn on the feast of the Angel Guardians?*

(i) "Machina" can have the meaning of "plan" or "scheme", namely, the plan of the whole universe. In the cosmology of the ancients,[1] the universe comprised heaven, earth and the lower regions, an idea reflected in Philipp, ii, 10: "... every knee should bow, of those that are in heaven, on earth, and under the earth". Guéranger in *U Année Liturgique* accepts this meaning in his version of the Guardian Angels hymn: "cc triple monde, des cieux, de la terre, et de l'abîme", and it appears correct, since a similar phrase occurs in other hymns:

(1) *SS. Angelorum Custodum* (ad Matutinum, v. 3)

Ranctac sit Triadi laus pia iugiter,
Suius perpetuo numine machina
Criplcx haec regitur, cuius in omnia
Tegnat gloria saecula.

Praise to the trinal Majesty, whose strength
This mighty fabric sways;
Whose glory reigns beyond the utmost length
Of everlasting days.
(Caswall, W. H. (1916), n. 170.)

(2) *In Ascensione Domini* (ad Matutinum, v. 3)

Ut trina rerum machina,
Coelestium, terrestrium,
Et inferorum condita
Flectat genu iam subdita.

Both heaven and earth, nay, death and hell,
And all in that in their confines dwell,
With bended knees fall down before
The general victor and adore.
(Prime, W. H. (1940), n. 59.)

That so in nature's triple frame
Each hcav'nly and each earthly name
And things in hell's abyss abhorr'd
May bend the knee and own him Lord.
(Neale.)

(3) *Commune Festorum B.V.M.* (ad Matutinum, v. 1)

Quern terra, pontus, sidera
Colunt, adorant, praedicant,
Trinam regentem machinam,
Qaustrum Mariae bajulat.

Whom earth and seas and starry sky
Adore and worship and declare,
The ruler of the threefold world
The womb of Mary Maid doth bear.
(Martindale, C. T. S., D. 259.

The God whom earth, and sea, and sky,
Adore and laud and magnify,
Who o'er their threefold fabric reigns,
The virgin's spotless womb contains.
(Neale, W. H. (1940), n. 103.

(4) *Sabbato in Officio feriali* (ad Matutinum, v. 1)

Summae Parens dementiae,
Mundi regis qui machinam
Unius et substantiae
Trinusque personis Deus:

Father of mercies infinite.
Ruling all things that be,
Who, shrouded in the depth and height,
Art one and yet art three.
(Newman; cf. Bute, *The Roman Breviary.*

ad (1). The three constituents correspond roughly to the idea in the three preceding verses. The translator avoids the difficult "triplex".

ad (3). By rendering "pontus" as "the deep" the common meaning of "triplex machina" could be retained.

1 E.g. Lucretius, *De Rerum Natura,* vv. 93-97·

ad (4). Pimont, *Les Hymnes du Bréviaire Romain* (1874), p. 276, secs an analogy with the Blessed Trinity: one world with three parts.

(ii) Another explanation, offered anonymously, is here reprinted with the presumed permission of the writer.

In the hymn for Matins, *Comm. Fest. B.V.M.,* the resemblance of strophes i and 3 to Isaias xl, 12, is so close as hardly to be the result of a coincidence. The texts are as follows:

(r) Quern terra, pontus, sidera *ip.l.* aethera)
Colunt, adorant, praedicant,
Trinam regentem machinam
Claustrum Mariae bajulat.

. . . . .
Mundum pugillo continens
Ventris sub arca clausus est.

(2) Quis mensus est pugillo aquas, ct caelos palmo ponderavit? Quis appendit tribus digitis molem terrae et libravit in pondere montes et colles in statera? (Is. l.c., Vulgate.)

Thus we have:

| In Hymn | | In Isaias |
|---|---|---|
| *terra* | = | *molem terrae* |
| *pontus* | = | *aquas* |
| *sidera* (or) : *aethera* | = | *caelos* |
| *mundum pugillo continens* | — | *mensus est pugillo* (also: *palmo ponderavit, appendit ti ibus digitis).* |

If, as seems clear, the hymn depends to some extent on Isaias, then the *trina machina* is not (directly, at any rate) that of Lucretius, etc., but of Gen. i, which Isaias has in mind here, and which is repeated so frequently throughout the Old Testament: Heavens (or Firmament), Earth, and (as suggested above in (i) ad 3 for *pontus)* the Deep *(tebom,* the Primal Ocean or Abyss). To equate this *machina* with that of Lucretius, of Phil, ii, 10, etc. (Heavens, Earth, and *Underworld of the Dead),* would involve a discussion of the relations between *tehom* (the Abyss) and *shcol* (the Underworld), as conceived by the Hebrews. See e.g. Kissane on Job xxvi, 5, *6 (Comm, on Job,* Dublin, 1939, p. 197); and, for another view, Whitehouse in Hastings' *Diet, of Bible,* s.v. *Cosmogony.*

**639.—** "Benedictio Habitus Clericalis"

*In the rituals previous to the editio typica,* 1925, *the prayer ended: "et* inter reliquos homines conversatione sancta *tibi agnoscantur esse dicati". The typical edition omits the words in capitals. Is this an error or a revised text? If an error, should the prayer still be said in its earlierform?*

We think that the omission is certainly a typographical error, extremely uncommon in current liturgical books. It is found in the Marne edition,

1925, but has been corrected in later printings of the typical edition so as to conform with the earlier text, e.g. Dcsclce edition, 1935.

The decree *S.R.C.*, to June, 1925,[1] approving the 192j typical edition, reads: ". . . ratam habuit et approbavit, atque uti *typicam* habendam esse decrevit, cui futurae editiones eiusdem Ritualis Romani conformandae erunt". We do not know of any later direction from *S.R.C.* correcting the error, but the official approbation obviously refers to the substance of the text and not to any possible typographical errors contained in it. Therefore, the truncated text of the prayer in *Appendix,* n. 13, found in certain early printings of the 1925 *Rituale Romanam,* should be corrected by adding the missing words.

## **640.—** Ordo Administrandi

*Is it known who was responsible for the original issue of this Ritual for use in this country?*

The only reference of which we are aware is in Burton, *Life and Times oj Bishop Chailoner,* II, p. 339, which, on the authority of Bishop Milner, attributes the editorship of the book, issued in 1759, *Auctoritate Vicariorum Apostolicorum,* to Bishop Chailoner. The title page is: "Ordo / Administrandi Sacramenta / et alia / Quaedam officia Ecclesiastica rite peragendi / in Missione Anglicana. / Ex Rituali Romano / Jussu Pauli Quinti edito / Extractus / Nonnullis Adiectis / Ex antiquo Rituali Anglicano." The place of publication is not given; the title *format* is similar to that found in all the subsequent editions up to and excluding the last one issued by Burns & Oates in 1915.

The smaller book previously in use is entitled: 'Ordo / Baptizandi/ aliaque / Sacramenta / Administrandi / et / Officia quaedam Ecclesiastica / Rite peragendi / Ex Rituali Romano jussu Pauli Quinti / edito, extractus. / Pro Anglia, Hibernia, / Et Scotia / Permissu Superiorum / Paris, / Anno Domini MDCCXXXVII1." It contains as an English Appendix the *Recommendation of a Soul departing* and *A Profession of Catholick Faith.*

One notable difference between the two books is in the rite of baptism: the earlier one, as noted in Q. 3, gave an English version of all the prayers throughout, immediately after the Latin formula; Chailoner's revision, however, gives an English version only of those parts which are translated in our current book. It would appear, therefore, that either on Challoner's own authority or on that of the Vicars Apostolic collectively, this important modification occurred first in 1759.

The chief difference is markedly Challonerian in character. We are given a lengthy Appendix, with fresh pagination and a separate title page, containing various instructions and exhortations: "An / Appendix / to the / Ritual / containing *I* Instructions / and / Exhortations / proper to be made / by Priests in the Administration / of the / Sacraments / and other / Ecclesiastical Offices / according to the / Spirit of the Church / and the / Prescriptions of her Canons." This compensates, in the baptismal rite, for the omission of the English translations of prayers, and is more in accordance

[1] *A.A.S.,* 192J, XVII, p. 526.

with the common liturgical law. The instructions, with some modifications, remained in subsequent editions up to and excluding that of 1915, which has merely the *Recommendation of a Departing Soul* as an Appendix.

### 641.— "Fidelium Deus"

*Does the ride of canon* 934, §2, *apply to the addition of the word "our" in the English version of the prayer "Fidelium Dens": "by our pious supplications" instead of "by pious supplications"?*

Canon 934, §2: Si peculiaris oratio assignata fuerit, indulgentiae acquiri possunt quocunque idiomate oratio recitetur, dummodo de fidelitate versionis constet ex declaratione vel Sacrae Poenitcntiariae vel unius cx Ordinariis loci ubi vulgaris est lingua in quam vertitur oratio; sed indulgentiae penitus cessant ob quamlibet additionem, detractionem, vel interpolationem.

*S. Poenit.,* 26 November, 1934; *A.A.S.,* 1934, XXVI, p. 643: Pluries a Sacra Pocnitentiaria quaesitum est: Utrum verba can. 934, §2, C.I.C. *indulgentiae penitus cessant ob quamlibet additionem, detractionem vel interpolationem* rigorose intclligi debeant de quibusvis additionibus, detractionibus vel interpolationibus an potius de iis tantum quae carumdcm substantiam alterent . . . *Resp.* Negative ad primam partem; affirmative ad secundam, facto verbo cum Ssmo.

(i) The rule of canon 934 is reasonable enough: if the faithful want to gain an indulgence attached to a prayer, they must recite the prayer and not some other prayer resembling it. The reply of 26 November, 1934, is equally reasonable, especially when it is a question of a translation, and is meant to allay scrupulosity. Commenting on this reply in *The Clergy Review,* 1935, IX, p. 65, Dr Bentley correctly applied it to the hymn verse *Maria Mater Gratiae,* deciding that the substance of the prayer remained the same whether one used the breviary form "Dulcis parens clementiae" or "Mater Misericordiae" as in the authorized text to which an indulgence was attached. On the other hand, apart from indult, additions to the *Hail Maty* when reciting the Rosary must be regarded as substantial changes;[1] similarly, the recitation of the Litany of Loreto with three invocations to one *Ora pro nobis* docs not suffice for gaining the indulgences.[2] In these instances an official declaration has resolved the doubt; in other instances one has to decide whether a change is substantial or not.

(ii) There can be no dispute that the word "our" is an addition in the translation which is not found in the original. It is so printed in the *Ordo Administrandi,* p. 311, and in many prayer books. The word was omitted in the 1886 edition of the *Manual of Prayers,* p. 161, and is omitted in the English version of *Preces et Pia Opera,* η. 549. It might be argued that the change is substantial, inasmuch as the original does not exclude the prayers of the Holy Souls for themselves, whereas the addition in the translation limits the sense to our prayers on their behalf.

We think, however, that the change is not substantial, for there is no

1 Cf. Q. 242.
• Cf. Q. 607.

reason why the holy souls should not be included in the word "our", relying on the doctrine of the communion of saints. With still greater reason one may regard "that pardon" instead of "the pardon" as a negligible modification, if any, of the concluding words of the prayer. The *Ordo Administrandi* has the reading "that".

The best form, nevertheless, is the one given in many missals and prayer books: "that through pious supplications they may obtain the pardon they have always desired".

### 642.—"En Ego"

*The older books and missals have the reading ". . . illud prae oculis babens quod iam in ore ponebat suo David Propheta de Te, O bone Jesu: Paderunt. . ." Recent official texts have "tuo" instead of "suo". Which is the correct form?*

There can be no question that "tuo" is now the correct form, as printed in the current *Preces et Pia Opera* issued in 1938. The prayer in its original Italian had "disse" simply, which in the Latin version appeared with the circumlocution "in ore ponebat suo", changed later to "in ore ponebat tuo". *S.C. Indtdg.,* 24 March, 1894, directed that the correct reading was "tuo". The current translation of n. 171, *Preces et Pia Opera,* has "David the prophet spoke in thy own person"; an English *Raccolta* published in 1861 has "David the prophet spoke in his own person"; the 1886 *Manual of Prayers,* evidently using the simpler Italian original, gives "David spake in prophecy".

The reading "tuo" has everything to commend it since it brings out the Messianic sense of the psalm by referring the words directly to Christ, instead of referring them directly to David and through him to Christ. Cf. Gougnard, *De Indulgentiis,* p. 307; Beringer, *Des Indsagences,* I, p. 202.

### 643.—Prayer Terminations

*Should the prayer after Mass "O God Our Refuge and Our Strength" conclude "Through Christ Our Tord" or "Through the same Christ Our Tord"? Different versions are found in various prayer books and on the "cards".*

The rule, as deduced from the text of prayers in the missal and from various instructions of the *Congregation of Rites,* is that in the case of prayers addressed to God the Father, which contain no mention of God the Son, the conclusion is: "Per Dominum nostrum Jesum Christum Filium tuum, qui tecum vivit ct regnat in unitate Spiritus Sancti Deus, per omnia, etc." If God the Son is mentioned at the beginning, or middle of the prayer, the conclusion is: "Per cumdcm Dominum nostrum, etc."; and if the mention occurs at the end: "Qui tecum vivit et regnat in unitate Spiritus Sancti Deus, per omnia, etc." Outside of Mass and office, the shorter form is to be used, unless the longer one is indicated, namely, "Per Christum Dominum nostrum, Amen" and "Per cumdcm Christum Dominum nostrum, Amen".

It follows, therefore, from this rule, that the correct conclusion for the prayer "O God Our Refuge and Our Strength" should be: "Through the

same Christ Our Lord." The omission of the words "the same" in some editions of the prayer must be due to inadvertence on the part of the person responsible for the text, or to the error of not recognizing a reference to God the Son in the words "Dei Genitricis" "Mother of God". Even the *Manual of Prayers,* re-issued with episcopal authority in 1922, contains the short ending, which, in our opinion, is incorrect. The Latin texts, which wc have been able to consult, have the longer ending.

*The ending "Per Christum Dominum Nostrum" of the prayer for the king, "Quaesumus omnipotens Deus", recited after Mass on Sunday, is the termination proper to a prayer addressed to God the Father. But the prayer contains the phrase "ad Te, qui via, veritas et vita es" which can only refer to Christ Our Lord, since the words are taken from John xiv: "I am the way the truth and the life. No man cometh to the Father but by me." Is the ending correct?*

The difficulty concerning the termination of the prayer for the king is in a special category, since the substance of the prayer is involved and not merely the ending. Moreover, there are theological reasons for not calling God the Father "the way", though He may be called "truth" and "life". If the prayer is, therefore, addressed to God the Son, the correct conclusion is "Qui vivis et regnas".

The subject was examined in the *Revue Liturgique et Monastique,* 1934, n. J, by Fr D. S. Couneson. The error, if it is an error, was noticed and corrected by printing "Qui vivis et regnas . . ." in Roman missals of 1841 (Paris) and 1728 (Rouen), and in Carthusian missals of 1715 (Lyons) and 1679 (Savoy), all of French origin. It is, nevertheless, true that in its original form, dating from the ninth century, the prayer has the termination "Per Christum Dominum Nostrum". Fr Couneson points out that, provided the phrase "qui via veritas et vita es" is not understood in a Christological sense, there is nothing patently erroneous in applying it to God the Father, and he quotes another prayer in the *Liber Ordinum* in which the phrase is so applied.

## §7. DEVOTIONS

### 644.—New Devotions

*It is understood that the Church discourages new forms of popular devotions. By what practical measures, however, is the desire of the Church enforced, for it still seems that any novelty is assured of a popular welcome?(i)*

(i) After recalling the Tridentinc decrees, the measures of Pius XI, and canons 1259, 1261 and 1279 of the Code, the Holy Office, 26 May, 1937,1 gave the following monition:

"Dolendum tamcn est tot tamque gravibus Supremae Auctoritatis Ecclesiasticae monitionibus atque iniunctionibus non plene hucusque obtemperatum esse. Quin immo neminem iam latet novas huiusmodi

1 *A.A.S.,* XXIX, P. 304.

cultus et devotionis formas, nonnunquam ridiculas, plerumque aliarum similium iam legitime statutarum inutilem imitationem vel etiam contaminationem, his potissimum postremis temporibus, pluribus in locis, acatholicis maxime mirantibus acriterque obtrectantibus, in dies multiplicari atque inter fideles latius propagari.

Iterum igitur iterumque Suprema haec Sacra Congregatio Sancti Officii, Fidei morumque puritati atque integritati tutandae praeposita, de expresso mandato Ssmi D. N. Pii divina Providentia Pp. XI, Sacrorum Antistitum, ubique orbis catholici animarum curam gerentium, zelum ac pastoralem sollicitudinem, onerata eorum conscientia, vehementer excitat, ut strictissimam tandem aliquando memoratarum monitionum atque iniunctionum observantiam urgeant, abusus qui iam irrepserint firmiter abolendo et ne novi irrepant diligentissime cavendo."

(ii) This was followed, five years later, by another direction of the Holy Office, 17 April, 1942,1 which strengthened the hands of episcopal censors, upon whose judgement the Ordinary is accustomed to rely. The censor is always inclined to allow the fullest liberty in publishing matter of any kind, provided it contains nothing against faith or morals, and his *nihil obstat* does not imply that the text passed is a welcome addition to devout literature, or that the writer's outlook is sensible or even plausible. Canonists, nevertheless, have always taught that he may and should refuse a *nihil obstat* to anything judged, for a variety of reasons, to be inopportune. The present decree confirms this teaching; much more is now required in a book of piety and devotion than the absence of error:

"Supremae huic Sacrae Congregationi Sancti Officii haud infrequenter parvi libri pietatis ac folia precum deferuntur quae, etsi ab erroribus sunt immunia, quaedam tamen continent genuinae pietati Christianae parum congruentia, et insueta cultus seu devotionis genera inducunt non conformia cum Decreto S. Officii, diei 26 Mail, 1937, 'Dc novis cultus seu devotionis formis non introducendis'.

Ut igitur hacc vitentur, Ordinarii ad praeviam librorum foliorumque pietatis censuram doctos et prudentes viros deputent, qui in suo obeundo munere nedum doctrinae puritati, sed et sacri cultus gravitati consulant; iidemque Ordinarii licentiam edendi huiusmodi scripta ne concedant nisi maxima adhibita cautela."

(iii) Notwithstanding these precautions, new devotions are occasionally started which arc out of harmony with the directions of the Holy Office, and they may even obtain a qualified episcopal sanction. The procedure then is for the Holy Office to issue a direction specifically reprobating some new form of piety which, though doctrinally sound, is to be suppresssed.

## 645.— Corpus Christi Triduum

*Diocesan calendars often refer to a triduum and "Te Deum" within the octave of Corpus Christi ordered by Pins X. What is it exactly that we are required to do?*

*S.C. Indulge* 10 April, 1907; yJ.J.J., XL, p. 317: Ipse vero Beatissimus Pater... in votis habuit, ut quotannis, si fieri poterit, in singulis Cathcdralibus

1 *A.A.S.*, XXXIV, p. 144.

Ecclesiis, intra Octavam Corporis Christi, vcl si locorum ct personarum adiuncta aliter expostulaverint, alio anni tempore a Rmis Episcopis statuendo, triduanae Supplicationes celebrentur iuxta methodum heic subiectam: Supplicationes semper peragantur feria Via, sabbato et dic Dominica. . . . Die vero Dominica ... antequam *Tantum Ergo* decantetur, hymnus Ambrosianus praemittatur. Quo vero omnibus magis innotescat quam ardens sit desiderium Summi Pontificis frequentioris communionis promovendae, maximoperc Ipse commendat, ut in curialibus etiam templis, prout quisque Episcopus pro sua prudentia et sagacitate dijudicabit, saltem locum habet ea pia exercitatio, quae in Cathedralibus Ecclesiis celebranda superius est proposita dic Dominica. . . .

Many details have been omitted in the above extract. The religious exercises enumerated include a special prayer and sermons and instructions on frequent Communion; the document concludes with a list of the indulgences conceded to all taking part therein, as now contained in *Preets et Pia Opera,* n. 143. A further document from the same Congregation, 8 April, 1908, extended to the episcopate the faculty of choosing other suitable days for these exercises.

From the wording used, it is evident that the Holy Sec made no strict law on the subject, but it was open for the bishops to do so, as many did for their own dioceses. In this country the *Ratus Servandis,* p. 46, after an English version of the prayer, directs as follows: "On the Sunday there is to be a general Communion and a homily on the gospel of the second Sunday after Pentecost. In the evening the sermon should deal with frequent Communion and *Te Deum* should be sung at Benediction before *Tantum Ergo.* These services, at least on the Sunday, should also take place in parish churches so far as the bishop may direct."

It is, accordingly, for the clergy of each diocese to observe whatever the local Ordinary[1] has directed: in some parts the devotions seem to have ceased, whilst in others the *Te Deum* alone is ordered to be sung, or merely to be recited.

Both the desire of the Holy Sec, and the instructions of the English bishops, refer only to cathedrals and parish churches.

## 646.—Hymns during Exposition

*vernacular hymns may be sung before the Blessed Sacrament exposed?*

In the common law, apart from the rule forbidding chants in the vernacular of liturgical hymns, there is some uncertainty as to what is permitted before the *Tantum Ergo,* the recent directions of *S.R..C.* having departed from the extreme rigidity of the earlier replies.[1]

In England, from the *Ritas Servandus,* Pracmomcnda, §5, and from a further direction of the Bishops given in Low Week, 1934, the following English hymns are permitted before the *Tanfam Ergo:* "Jesus, my Lord, my God, my All"; "Sweet Sacrament Divine"; "Soul of my Saviour"; "O Bread of Heaven"; "Jesus the only thought of Thee"; "O Godhead Hid, devoutly I adore Thee". The first two are mentioned in the *Ratus Servandus',* the last, though omitted from the current *Westminster Hymnal,* may still be

[1] Cf. *I'Ami du Clergé,* 1928, p. 606; *Irish Ecctuiastical Record,* 1945, LXVI, p. 301.

sung as directed in T954.1 It is open to any bishop to sanction for his diocese other vernacular hymns not contained in the above list, but we are not aware of any recent modifications of the list as it existed in 1934.

### 647.— Representations of Christ and the Saints

*The custom ofpersons walking in religions processions, representing the figures of Oar Lord, Oar Lady and the saints, appears to be on the increase. Is there any law of the Church which conId be invoked against this practice which, to some people, is distasteful?*

There is no explicit prohibition amongst the decrees of the *Sacred Congregation of Rifes,* but there are a certain number of replies, which either discourage or prohibit the practice because of some attendant circumstance. Thus, it is forbidden to have such representations in a procession of the Blessed Sacrament, because the attention of the faithful is thereby distracted from the central object of the function. It is not allowed to dress children as saints and martyrs, or group them as representations of Christian mysteries, on these occasions, because: "non solum Christifidelium non augent pietatem, imo a debita adoratione SSmi mentes populi distrahit";[1] "utpote quae ex sui natura animum avertant ab adoratione Sanctissimi Sacramenti, quod unice in iisdem intenditur".[3] A further circumstance which could easily arise is that of causing scandal; for example, mocker}' on the part of the irreligious, or amusement owing to the crude nature of the representation.

There is one reply which has this point in mind, and with reference, not solely to processions of the Blessed Sacrament, but to all processions: "An permittendum sit ut pueri puellaequc nedum septennio minores, sed virgines ultra vigesimum annum, magno cum scandalo, Sanctos Sanctasque eorumque vitas, miracula et mortes repraesentantes, cum insignibus eorumdem sanctorum induant et incedant?" The answer was "Prohiberi".[4] But one might hazard the guess that "magno cum scandalo" was added to the question by the *Sacred Congregation of Rites.* For, if there is no scandal caused, there may be reason to believe that the devotion of the people will be increased by such items in popular processions. Functions of this kind are generally in the hands of the clergy, who are presumed to use their discretion in excluding what is ludicrous or unworthy of the sacred subject, and there is also the intervention of the Ordinary which can be invoked, if necessary. Passion plays and Nativity plays arc not only allowed but encouraged by ecclesiastical authority, and there is clearly no prohibition against such things in themselves.

### 648.— Sabbatine Privilege

IPTw/ *is tbe Sabbatine Privilege and tbe conditionsfor possessing it?*

*Breviariam Romanum,* 16 July, lectio vi: . . . filios in scapularis societatem

1 Fortcscuc-O'Connell, *The Ceremonies of the Roman Rite Described,* p. 235.
1 N. 1348.
5 N! 2789.
4 Bl. 1361.

relatos, qui abstinentiam modicam precesque paucas cis praescriptas frequentarunt, ac pro sui status ratione castitatem coluerunt, materno plane affectu, dum igne purgatorii expiantur, solari ac in coelestem patriam obtentu suo quantocius pie creditur efferre (Beatissima Virgo).

§ *Bjomana et Univ. Inquisitio,* 20 January, 1613: Patribus Carmclitanis permittitur praedicare quod populus Christianus possit pie credere de adiutorio animarum fratrum et confratrum sodalitatis B.V.M. de monte Carmelo, videlicet beatissimam Virginem animas fratrum ct confratrum in charitate decedentium, qui in vita habitum gestaverint ct castitatem pro suo statu coluerint, officiumquc panum recitaverint, vel, si recitare nesciant, Ecclesiae jejunia observaverint ct feria quarta et sabbato a carnibus abstinuerint . . . suis intercessionibus continuis piisque suffragiis et meritis ac speciali protectione post eorum transitum, praecipue in dic sabbati, qui dies ab Ecclesia eidem beatissimae Virgini dicatus est, adjuturam.

(i) The decree, 20January, 1613, was re-issued in 1908, and is quotedin the official Roman manual of the Confraternity, together with various approvals of the privilege by earlier popes, including that of John XXII, who is generally considered to have been the first to sanction belief in the privilege. It does not, however, mention the bull of John XXII, 3 March, 1322, generally considered apocryphal, which contains certain statements difficult to explain. In the form now current, the pious belief or reliance on this privilege offers no difficulty. It is not an indulgence, in the proper meaning of the word as defined in canon 911, though some of the documents loosely refer to it as such; the conditions are, in fact, more onerous than those attached to any indulgence.

(ii) These conditions are: *(a)* to be invested with the scapular of Our Lady of Mt. Carmel, and throughout one's life to wear it, or to carry instead a medal specially blessed for this purpose (J. *Off.,* 16 December, 1910); *(b)* to preserve the virtue of chastity according to one's state, which includes, of course, the lawful use of marriage; (i) if able to read, to recite daily the Little Office of Our Lady, a condition which is declared to be fulfilled *(S.C. Indulge* 18 August, 1868) in reciting the canonical office by those bound thereto; (J) if unable to read, the previous condition is replaced by observing, in accordance with local induits, the fasts of the common law, as in canons 1250 *seq.* and by abstaining every Wednesday and Saturday except when Christmas falls on these days *(ibid.,* 14 June, 1901).

The above conditions may not be commuted from canon 935, since the privilege is not strictly speaking an indulgence. But all confessors may commute the abstinence *(ibid.,* 14 June, 1901), and the other conditions may be commuted by those who have obtained the faculty.

Cfr. *Collât. Brugen.,* 1901, p. 540 and 1929, p. 369; *l'Amidu Clergé,* 1939, p. 156; Schrevel-Lcgrand, *Florilegium,* p. 322; Beringer, *Fes Indulgences,* II, p. 189.

*From what source may a priest who has the power to invest the faithful with the scapular of Our Fady of Mount Carmel obtain a faculty to commute the conditions attached to the ltSabbatine Privilege"?*

Canon 935, which empowers confessors to commute the conditions for gaining indulgences, may not be used for this privilege, since it is not,

properly speaking, an indulgence. All confessors, however, fromJ.C. *Indulg.,* i4 une, 1901, may commute the abstinence condition.

The power of investing the faithful with the scapular, to which this privilege is attached, is included in the cumulative faculties which one may obtain by joining some association such as the "Missionary Union". But we have not discovered in any of these lists of cumulative faculties the power of commuting the conditions attached to the privilege. There is some reason, perhaps, for supposing that the commuting power always accompanies that of investing, since it is contained in the formula granted to priests who have obtained the investing faculty *directly* from the Carmelite Superiors, instead of getting it *indirectly* by joining some association such as the "Missionary Union". It reads as follows: "Tibi quoque, si iam ab Ordinario loci ad sacras Christifidelium confessiones audiendas sis approbatus, facultatem concedimus commutandi, ob iustam causam, in aliud opus obligationes peculiares pro *privilegio sabbatino* consequendo. . . ."

But there is nothing corresponding to this in the cumulative faculties, obtained indirectly. On the contrary, the writers we have consulted who deal with this point agree that, in addition to the faculty for investing with the scapular, a special one is required for commuting the conditions attached to the privilege. Thus Génicot, *Theol. Moralis,* II, §409.6; Gougnard, *De Indulgentiis,* p. 252. In 1929 the Vicar General of the Carmelites replied to a query on this point: "Observent tenorem rescripti seu gratiae: quodsi facultate commutandi careant, recurrant singuli ad praepositum generalem."1 There exists accordingly, in our opinion, no basis even for invoking canon 209: the commuting faculty is not enjoyed unless it is expressly conceded.

### 649.—Blessed Ashes

*Pions customs exist in many places with regard to the ashes which, in a strictly liturgical observance, should be distributed only at the Mass on Ash Wednesday. For example, thefaithful sometimes wish to take the blessed ashes home with them, to be given to a sick person; occasionally they expect the priest to visit the house with ashesfor the same purpose ; in many places the ceremony is observed on thefirst Sunday of Dent, in the churches, since many are unable to be present on Wednesday. Slay these customs be tolerated? Farfrom causing any harm they serve a useful religious purpose, and it would seem they should be allowed io continue unless there is some law existing which prohibits them. Is this correct?*

Official solutions of these doubts have been given at various times. In each case it is supposed that a pious custom is in possession, which is not justified by the rubrics of the Missal or by any authorized Ritual.

(i) J.R.C., 9 June, 1668, n. 1367. *S.R.C.* ad preces parochi S.J. Baptistae Terrae Psychii Umbriaticen. Rossancn. Dioecesis, declaravit: Guardiano Minor. Observant. Reformat, non licere se conferre ad domus habitantium sub illius parochia, eisque distribuere in iisdem domibus cineres die prima Quadragesimae, prout introduci exposuit.

(ii) Benedict XIV, Const. *Omnium Sollicitudinum,* 12 September, 1744,

1 *Collât. Brugm.,* 1929, p. 372.

*Fontes,* n. 548, quoting Benedict XIII: . . . mandantes ut Sanctae Ecclesiae consuetudo, piique ritus Cineres benedicendi, illisque Christianorum caput Cruce signandi, ad humanae infirmitatis memoriam recolendam, religiose serventur, tempore, ac modo ab Ecclesia praescripto, scilicet Feria quarta Cinerum, et non alias.

(iii) T.R.C., 7 May, 1892: Apud Christianos huius Archidioceseos Columbi Celani, a longo tempore usus invaluit sacros cineres Feria IV Cinerum juxta Ecclesiae Rituum benedictos, domi, ad instar cuiusdam sacramentalis adhibendos, secum afferendi.... An usus sacroroum cinerum supra descripti tolerari possit? *Resp.* Non esse interloquendum.

(iv) *S.R.C.,* 30 June, 1922, n. 4373: Abhinc multis annis viget consuetudo, in nonnullis sive piarum domorum sive paroeciarum ecclesiis, imponendi fidelibus, prima Dominica Quadragesimae, Cineres praecedenti Feria IV benedictos. Sic enim omnes fideles recipiunt cineres. ... Potestnc permitti talis usus. *Resp.* Affirmative in casu; dummodo Feria IV Cinerum ritus benedictionis et impositionis Cinerum expletus fuerit, juxta Missale Romanum, et Dominica prima in Quadragesima post expictam Missam aut extra Missam fiat impositio corumdem Cinerum.

*S.R.C.,* 1 February, 1924, n. 4368: Num eadem permissio (Cf. n. 4373) valeat etiam pro Oratoriis Piarum Unionum seu Congregationum, vel sacellis ruralibus, aliisque ubi peragantur exercitia pro opificibus, ut iidem omnes facilius Cineres recipiant et non careant hoc tam utili sacramentali? *Resp.* Affirmative, juxta prudens Ordinarii judicium in singulis casibus, servato tenore decreti, n. 4373.

These documents are, in some respects, conflicting. The first one is almost universally quoted by the authors as an express prohibition of the practice of priests taking blessed ashes to private houses.[1] Yet, on examination, it rather appears that the decree implicitly approves the custom, for it was concerned with prohibiting a religious, in the province of Naples, from performing this function within the confines of a certain parish. A writer in *I'Arni dtt Clergi,* 1909, p. 784, adopts this interpretation and decides for the lawfulness of the practice.

The second document is dealing with superstitious practices and, whilst reprobating the use of curious analogous rites, takes the occasion for recommending the accepted rites of the Church. If taken in its context it could be held tliat the non-liturgical use of blessed ashes is not expressly forbidden unless the practice becomes superstitious.[2]

The third document favours the non-liturgical customs. "Non esse interloquendum" may mean that the custom is not to be interfered with, or that the Congregation declined to give an official decision. This decree is not included in the *Decreta Authentica,* but is found in the *Collectanea S.C. de Prop. Fide.*

The last two replies are clear. The custom of distributing ashes on the first Sunday in Lent may be permitted in parish churches and chapels; also in other places, which arc used for religious purposes, provided the permission of the Ordinary is obtained.

It is certain, therefore, that the custom of distributing ashes in churches

[1] E.g. *Irish Ecclesiastical Record,* 1917, IX, p. 421; Ojctxi, *Synopsis Rerum Moralium,* n. xojx.

[*] Thus *Ecclesiastical Review,* 1901, XXIV, p. 424; 1902, XXVI, p. 461.

not only *extra Missam* on Ash Wednesday as the authors commonly teach,1 but also *extra Missam* on the following Sunday, may lawfully be continued. Their distribution in other places used for religious purposes is lawful, provided the consent of the Ordinary is obtained. With regard to other uses, e.g. priestly visitation of houses, or allowing the faithful to take ashes home, I am personally inclined to regard them as unlawful. Nevertheless, these practices are not clearly and certainly forbidden. Any priest is free to adopt the solution given by the authorities I have mentioned. *l'Ami du Clergé* decides that the priestly visitation of houses is lawful; the American *'Ecclesiastical Review* and the *Irish Ecclesiastical Record* decide that a priest may use his discretion in allowing the laity to take blessed ashes home with them as a sacramental. Neither of these practices is liturgically correct and they are liable to be abused, but if the customs exist it may be better to tolerate their continuance rather than upset the piety of the faithful. Some of the most Catholic parts of Europe are not in the least observant of liturgical laws. The whole question is one of toleration of existing customs. If no such customs exist it is wrong to introduce them.

### 650.—Blessing of Roses

*Is one permitted to bless roses in honour of St Teresa of the Child Jesus and for the devotion of the faithful?*

We know of no reason why the *Benedictio ad Omnia* should not be used for the purpose. *Ephemerides Eiturgicae,* 1926, p. 228, prints the following formula entitled "Benedictio Rosarum in Honorem Sanctae Teresiac ab Infante Icsu" :

V. Adiutorium nostrum in nomine Domini. R. Qui fecit coelum et terram.

V. Domine exaudi orationem meam. R. Et clamor meus ad te veniat.

V. Dominus vobiscum. R. Et cum spiritu tuo.

OREMUS. Domine Icsu Christe, respice propitius super has rosas, quas in honorem Sanctae Tcrcsiac Virginis, Sponsae tuae bene + dicimus; et praesta, ut omnes, carum fragrantiam gustantes, in odorem unguentorum tuorum currant, et, eadem Sponsa tua intercedente, tam animae quam corporis sanitatem percipere mereantur. Qui vivis ct regnas, etc. R. Arnen. *Et aspergantur rosae aqua benedicta.*

An appended note explains: Hanc benedictionis formulam S.R. Congregatio die 9 Decembris 1925 approbavit, eiusque usum concessit Praeposito Generali Carmclitarum Excalceatorum, cum facultate subdelegandi ad hoc alios sacerdotes tam regulares quam sacculares. Petitiones ad hanc facultatem obtinendam fiant eidem (Chicsa di S. Teresa ai Corso d'Italia, Roma).

1 Dc Herdt, 111, n, 20; *l'Ami du Cler&t,* 1913, p. 480·

**651.—** Agnus Dei

ITA?/ *is tbe specific character of the devotional article known as an "Agnus Dei"?*

It belongs to the category of "sacramcntals", defined in canon 1144: "res aut actiones quibus Ecclesia, in aliquam Sacramentorum imitationem, uti solet ad obtinendos ex sua impetratione effectus praesertim spirituales". There is no indulgence attached.

The *Agnas Dei* is a medallion of wax, taken from the paschal candles used in the Roman basilicas, with the paschal Lamb stamped on one side, and on the other the image of Our Lady or of some saint. A recent one described in *The Catholic Herald,* 18 April, 1946, is dated 1928, the year of its blessing by Pius XI, and is a flat oval disc about the size of a hen's egg; the saint is St Teresa of the Child Jesus. They are blessed by the pope at the beginning of his pontificate, at intervals of seven years, at the times of Jubilee, and on any other occasion chosen by the Moly Father. Their origin, though very ancient, is somewhat obscure: the fullest account we have seen is that by Fr Thurston in *The Holy Year of Jubilee* (1900), pp. 247 *seq.* Blessed Cuthbert Mayne, it will be remembered, was apprehended and martyred through having these sacred objects in his possession. Popular devotion towards them, though at one time widely spread in this country, seems to have diminished in recent times.

The purpose the Church has in mind when blessing and distributing them is contained in the prayers of the rite: remembrance of the Lamb of God immolated for our redemption; protection against evil spirits and the forces of nature such as floods or lightning; the happy issue of pregnancies; in short, preservation from all the dangers attending human life. We have not been able to find the text of the blessing which, being reserved to the pope, is not printed in the usual liturgical books. Ferraris, *Bibliotheca,* s.v. "Agnus Dei" prints the following verses ascribed to Urban V:

Balsamus, ct munda ccra cum chrismatis unda
Conficiunt agnum, quod munus do tibi magnum,
Fonte velut natum per mystica sanctificatum.
Fulgura desursum pellit, et omne malignum.
Peccatum frangit, ut Christi sanguis, ct angit.
Praegnans servatur, simul ct partus liberatur.
Munera fert dignis, virtutem destruit ignis.
Portatus munde de fluctibus eripit undae.
Morte repentina servat, Satanacque ruina.
Si quis honorat cum, retinet super hoste tropaeum.
Parsque minor tantum, tota valet integra quantum.
Agnus Dei, miserere mei,
Qui crimina tollis, miserere nobis.

# VI. SACRED THINGS

## §1. ALTARS

### 652.—Erection and Change of Altars

*Has a newly appointed parish priest the right to remove altars in tbe church and replace them by others which are, in his judgement, more acceptable to the people and more devotional?*

The matter, in some particulars, is governed by the common law of the Church. Firstly, if the altars arc things of great value, their removal from the church altogether comes under the law regulating alienation of church property, as contained in canon 1552; the competent authority is not the parish priest but the Holy See or the Ordinary according to the estimated value of the things. From the details supplied by our questioner it is evident that a violation of this law is not in question.

Secondly, grave liturgical laws govern the permanence of the titular saint of a fixed altar: canon 1201, §3 : "De Ordinarii Licentia mutari potest quidem altaris mobilis, non autem altaris immobilis titulus." In one of the instances cited it is alleged that the statue of St John the Baptist was removed from a fixed altar dedicated to him and replaced by a modern saint. Even on the supposition that the altar remains dedicated to St John the Baptist, it is unlawful to place over a fixed altar the statue of a saint other than that to whom the altar is dedicated: ". . . tituli imago super Altari absolute non praecipitur. Si tamen quaedam esset apponenda Altari fixo, imago tituli apponatur".1

Apart from laws of this kind, there is little in the general law of the Church which regulates the changing of altars. Canon 1184, §4, states that in those places where the fabric of the church is under the care of the members of a lay council, they have no power "in dispositionem materialem altarium". Coronata rightly concludes that this comes within the province of the rector of the church, "qui tamen in iis agendis aut determinandis leges universales Ecclesiae aut jus particulare servare tenetur".2

In England the local law of *I Westm.,* xxv, 4, states: "Aedificia omnia sacra, scholas, prcbytcrium, nccnon omnia alia ad ecclesiam pertinentia, sarta tecta custodire curet. Nihil innovet, vel addendo, vel alienando, vel etiam notabiliter immutando, inconsulto episcopo." The latter part of this passage covers the substance of the question raised: if the changes are "notable" the Ordinary's permission must be obtained; *de minimis non carat lex,* and the law does not require a priest to approach the Ordinary in order to obtain his sanction for slight alterations.

### 653.—Position of High Altar

*Is it forbidden to erect an altar facing the ll^est or the entrance of the church, so that the priest celebrating Mass may do so facing the people?*

1 N. 4191.4.
* *Inctitutionci Juric Canonici,* II, §758.

(i) It is certainly not forbidden to celebrate in this position if the altar is so built. Roman basilicas are so constructed and the Mass is said facing the people; the altar is midway between the apse or presbyterium and the nave. Some ancient French churches, notably at Besançon and Verdun, have preserved the same feature and Mass is always celebrated, at the high altar, facing the people. In some cases, it appears, the custom arose from a strict observance of the rule requiring the priest to stand so as to face the East. But, for the most part, it is to be traced to the ancient disposition of the Roman basilica. In many instances it has been retained, in collegiate churches, in order to provide for a double set of offices, the one capitular and the other parochial. That Mass celebrated at such altars is perfectly rubrical and correct is apparent from the rubrics of the missal, R/7. *Celebr. Miss., V,* 3: "Si Altare sit ad Orientem versus populum, Celebrans versa facie ad populum, non vertit humeros ad Altare, cum dicturus sit Dominus vobiscum, Orate fratres, Ite Missa est, vel daturus benedictionem; sed osculato altari in medio, ibi expansis et junctis manibus, ut supra, salutat populum, et dat benedictionem."

(ii) Whether a new altar should be so constructed depends, firstly, on certain practical considerations: the position of the tabernacle, which has to be placed normally on thehigh altar, would obscure the priest from the view of the people. Also, it is worth considering whether it would be allowed to remain permanently as erected; almost inevitably a desire to conform with the common usage would lead to its being changed. A further consideration is whether the almost universal custom of the celebrant having his back to the people could be disregarded without danger of bewildering the faithful. This latter consideration is tantamount to asking whether our present use has not now acquired the force of law. We are inclined to think that it has.[1]

The right conclusion, based on these considerations, is that one should seek permission from the Ordinary before departing from the common use, and permission would, doubtless, be forthcoming for adequate reasons. It is hard to imagine what these reasons would be in the ordinary parish church. In a church serving the needs of a monastic body as well as those of a school, as at Ampleforth, the utility of such an altar is apparent.

The Cardinals and Archbishops of France made the following pronouncement on the subject in 1945: "An altar arranged for the celebration of Mass facing the people is provided for and permitted by liturgical law. ... At the same time, having regard to the practically universal custom of priests celebrating Mass nowadays with the back to the people, a return to a more ancient discipline would appear to be, in the eyes of the faithful, an innovation. ... In any case, it is solely for the bishop of the diocese to direct and control a movement for restoring the celebration of Mass facing the people. He alone has the right to regulate this matter. Accordingly, no one in this diocese may, on his own authority', decide to celebrate Klass facing the people. Before making this decision, which in our present circumstances is of a very exceptional character, a request accompanied by reasons must be addressed to Us."[2]

1 Cf. *Q.L.P.,* 1956, p. 278; *I'Ami du Clergé,* 1928, p. 382.
1 *Doaanen/a/ton Catholique,* 1945, col. 77J.

### 654.—Fixed Altar Stone

*The "mensa" of an altar which has been consecrated is constructed of two stones of equal si%e cemented together. If, as suspected, the consecration is invalid, may the defect be remedied by inserting a portable altar stone in tbe centre?*

Canon 1198, §1 : Tum mensa altaris immobilis tum petra sacra ex unico constent lapide naturali, integro et non friabili.

This altar stone or mensa is certainly defective since not consisting of one solid piece of stone. But the directions of the *Congregation of Rates,* in similar instances, are not entirely coherent. In n. 4191.1, it was decided that an altar stone of the following description was invalidly consecrated: "mensa non constat ux uno et integro lapide, sed ex duobus lapidibus inaequalibus, qui tamen in unum coniuncti sunt". In n. 4204, however, it was considered validly consecrated: "mensa seu tabula Altaris duabus marmoreis tabulis componatur, una alteri imposita, sed ita adamussim unitis, ut unam effingant, adeo ut, qui id ignoraverint, tabularum pluritati non crederet". Bouscaren, *Digest,* II, p. 348, quotes a private reply, 17 October, 1931, in which an altar of the same description is declared invalidly consecrated.

In our opinion, if the altar stone appears to observers to be properly constructed, one may rely upon n. 4204; or, with the approval of the Ordinary, a portable altar stone may be inserted as suggested in the question, and as directed in n. 4191. But when constructing altars the law of canon 1198, §1, should be very strictly observed, and a *mensa* composed of several layers of stone should not be consecrated as a fixed altar.

### 655.—Defective Altar Stone

*Is it ever permitted to celebrate Mass upon an altar stone in which there are no relics?*

Canon 882, §1: Missa celebranda est super altare consecratum. . . .

Canon 1198, §4: Tum in altari immobili tum in petra sacra sit, ad normam legum liturgicarum,sepulcrum continens reliquias sanctorum,lapide clausum.

Canon 1200, §2: Tum altare immobile tum petra sacra amittunt consecrationem ... si amoveantur reliquiae aut frangatur vel amoveatur sepulcri operculum.

(i) The common law is quite certain and definite: Mass must be said upon a consecrated stone, and the consecration is lost if the relics are removed. Though intimately connected with the most sacred mysteries, this is a positive law which is occasionally dispensed by the Holy See. An Ordinary may, from canon 822, §4, permit Mass to be said in any suitable place, provided an altar stone is used; for dispensing from the latter an induit is required, of which many examples may be quoted. Thus, *Propaganda,* 2 September, 1780; *Fontes,* n. 4583: "De venia celebrandi in locis non benedictis non est cur quaeras; habes enim tamquam Superior istarum Missionum facultatem celebrandi . . . etiamsi altare sit fractum vel sine Reliquiis Sanctorum. Sin autem per huiusmodi petitionem intclligis dc facultate celebrandi sine altari benedicto, vel sine tabula seu lapide sacro

altaris, id quidem S. Scdi non est in more concedere." Similar faculties arc still enjoyed by Missionary Ordinaries and by army chaplains in some places, as well as the use of an *antimensium,* a strip of Linen containing relics as used in Eastern rites, which is normally forbidden by canon 823, §2.

(ii) May a priest celebrate with a defective altar stone in the case of a sudden emergency, when there is no time for recourse to authority? It is a question one would expect to find treated by the manualists, since a prudent judgement is required for applying the principle of *epikeia* to this extremely grave law. For the most part, however, they avoid the issue, or are content to prove that the action is never lawful; thus Priimmcr, *Theologia Moralis,* III, §296; Acrtnys-Damen, II, §239. Merkelbach, III, §389, concedes the point in one extreme necessity which is not of practical moment: "Hinc vix dari posset casus in quo licitum esset 'nisi forte mortis, non tamen in contemptum religionis intentatae' ait Billuart."

In our view, inasmuch as the Church is accustomed to dispense from the law, there seems no reason why *epikeia* should not be used, provided always that it is kept within the terms of the faculties and induits mentioned above, namely that an altar stone of some kind is used even though fractured, lacking relics, or otherwise defective. This is, perhaps, an illogical solution, since it would appear from the above canons that an altar stone which has lost its consecration is nothing more than a piece of stone having no sacred significance. Nevertheless, this is the conclusion to be drawn from all the documents cited above, and very likely the strict expressions of many modern writers must be understood in this sense: Mass may never be said for any reason whatever without, at least, a defective altar stone. Noldin, III, §213: "Privilegium celebrandi sine lapide consecrato ne missionariis quidem concedi solet." Coronata, *Institutiones,* II, §779: "Sine altari consecrato nunquam, ne in casu urgentis necessitatis, fas est celebrare, nec in hoc S. Sedes dispensationes concedere solet." Gasparri, *De Eucharistia,* §311: "Neque S. Sedes unquam indultum concedit, ut extra altare consecratum Missa celebretur."

(iii) If it is asked, finally, whether any writer maintains the lawfulness, in extreme necessity, of celebrating without an altar stone of any kind, even a defective one, Wouters, *Theologia Moralis,* II, §250, 6, is the only authority we can discover: "Praeceptum consecrandi in altari consecrato, nec exeerato, grave est. Porro secundum alios nunquam licitum est extra altare celebrare; secundum alios illud licet in gravissima necessitate, v.g. pro viatico conficiendo, quia, inquiunt, praeceptum viatici recipiendi divinum, prohibitio autem extra altare celebrandi ecclesiasticum." We think this may be taken as a probable opinion, and there may be other manualists who hold the same view.

### 656.— Gradines

*Desiring to erect an altar which is in perfect accordance with liturgical laws, I would like to know what exactly is the law with regard to gradines?*

If the altar is to have no tabernacle, it is more in accordance with liturgical directions to construct it without gradincs; also, according to the current opinion, this simplicity is more artistic. Primitive altars, as those

in the Roman basilicas, have none, though they may often be seen on the smaller altars in these churches. A gradine prevents the perfect observance of such directions as *Caerem. Epp.,* I, xii, n: "... in superna linea mappae mundae tres saltem explicentur, quae totam altaris planitiem, et latera contegant. . . . Supra vero in planitie altaris adsint candelabra sex argentea, si haberi possunt ... et super illis cerei albi, in quorum medio locabitur crux". The direction supposes that the *mensa* is quite flat, covered with cloths, upon which stand the candlesticks and crucifix. The use of gradines has been occasioned by the excessive addition of ornaments; since nothing should be placed on the altar except what is required for the sacrifice, the gradines accommodated various articles, especially flowers and candelabra, which could not rightly be placed on the altar. The modern reaction against all these additions is largely responsible for the growing feeling against gradines.

But in parish churches where the Blessed Sacrament must be reserved at the high altar,[1] it is a moot question whether a gradine is a liturgical evil. For, since the tabernacle must be fixed, one has a choice between fastening it to the wall at the back, which prevents a free passage around the altar, or of fixing it to the altar; in the latter case, if there is no gradine, staples would have to be driven into the *mensa,* which most liturgists would deprecate.

Accordingly, the instruction of the *Congregation of the Sacraments,* 26 May, 1938, 4, a, offers a choice between fastening the tabernacle to the wall at the back or to the lowest gradine of the altar: "validis ferreis seris altari arcte debet devinciri in infimo eius gradu aut parieti adverso". It seems to take for granted that the altar upon which the Blessed Sacrament is reserved will have a gradine.[2] This text is a further, and the latest, instance proving that the use of a gradine is permitted by the Holy See.

## 657.—Structure of Privileged Altar

*For an altar to be "privileged" what are the minimum requirements in its structure? Must the words "Altare Privilegiaturn" be prominently inscribed upon it?*

Canon 918, §1: Ut indicetur altare esse privilegiatum, nihil aliud inscribatur nisi: *altare privilegiatum,* perpetuum vel ad tempus, quotidianum vel non, secundum concessionis verba.

The privileged altar is of various kinds according to the concession received, e.g. personal or local, *pro vivis* or *pro defunctis,* perpetual or temporary.[3] The essential thing is to have some proof of the privilege being granted either by the Holy See or by one of the persons mentioned in canon 916, but it is not necessary for the altar to carry any inscription to that effect, although this is a common practice. The direction of canon 918, §r, is for the purpose of preventing exaggerated descriptions of the indulgence.

The privilege may be attached to an altar in an unconsecrated church,

[1] Canon 1268, §2.

[3] *A.AS.,* 1938, XXX, p. 199; cf. *S.R.C.,* n. 3759.2, and Q. 660.

[2] Cf. writers on indulgences: Beringer, *Les Indulgentes* (1925), I, §§978-93; *Collât. Brugen.,* 1926, p. 24, and 1927, p. 197; Gougnard, *De Indulgentiis,* p. 121.

and in principle only one altar may be so privileged "intuitu paroeciae"; if the church contains more than one, it is because the additional privileged altar belongs to some body distinct from the parish.

The altar need not be "fixed" in the liturgical sense of canon 1197, but the privilege cannot be attached to an altar stone that is moved about from one place to another. It suffices if the structure is of a stable character, even though it is not fixed to the ground or the surrounding walls, and even though the altar stone is itself movable: the privilege is attached to the structure, not to the movable stone, and a wooden structure is not excluded. It may be replaced by another structure provided the title is not altered, or the existing structure may be stably erected elsewhere in the same church.

### 658.— Altar of Titular

*In a chtirch dedicated to St John, and in which there is no provision exceptfor two additional altars, is it not necessary, or at leastfitting, that one of the additional altars should be dedicated to St John?*

It is certainly not necessary in any church, no matter what its dedication, to have more than one altar. Is it fitting that there should be an altar dedicated to the titular Saint? The answer to this question can only be that, in a consecrated church, there is and there must be an altar so dedicated —it is the high altar (canon 120r, §2). That the high altar is the proper altar of the titular of the church is often forgotten, but it is evident enough from the rite of consecration as contained in the Pontifical. The parchment placed with the relics in the sepulchre of the altar is inscribed: "Ego N Episcopus N conscravi Ecclesiam et altare hoc, in honorem Sancti N. . . ." Several times throughout the rite the words occur: "Sanctificetur, etc. . . . ad nomen et memoriam Sancti N," and in the Litany of the Saints is introduced the triple invocation: "Ut Ecclesiam et altare hoc, ad honorem tuum, et nomen Sancti N consecranda benedicere digneris, etc."

For this reason, it is forbidden to place over the high altar any other statue except that of the titular of the church. To a question concerning the kind of statue of Our Lady that might be placed over the high altar, S.R.C. replied that the statue should be that of St Nicholas the titular saint.[1] When pressed with the objection that there was already a statue of St Nicholas in a building adjoining the church (in apposita aedicula), the answer was the same: "Relinquatur imago Sancti Nicolai propria in aedicula, sed in Ara maiori ponatur Icon illius Sancti, in cuius honorem est consecrata. . . ."[a]

If it is a question, therefore, of what is most fitting, it seems that the proper thing is for the devotion of the people towards the titular saint to be centred upon the high altar. Nevertheless, it is very common to find an additional altar of the titular of the church, apart from the high altar. We cannot find any text forbidding it. What is forbidden is to have two statues of the same saint in one church. More often than not, we imagine, the additional "altar" is merely a bracket or shrine before which candles and flowers may be placed.

[1] 27 August, 1836, o. 2752.5.
[a] n March, 1837, n. 2762.

## §2. TABERNACLE AND THRONE

### 659.— Construction of Tabernacle

*What are the requirements of the law concerning the structure of the tabernacle? Must it always be a steel safe?*

(i) The common law is reaffirmed and explained in the instruction of the *Congregation of the Sacraments, 26* May, 1958, n. *4,* the substance of which may be stated as follows: The first thing required by canon 1269 is that the tabernacle must be fixed and securely closed on all sides: *inamovibile et undequaque solide clausum.* Closure on all sides entails that it must be constructed of stout and solid material, *ex materia solida et firma.* It may be of wood or of marble or of metal, the latter being preferable. But, whatever the material used, the important point is that it should be solid, with its component parts strongly joined together; the lock must be very strong and must be firmly fixed to the door, the hinges of which must be strongly constructed and fixed in the tabernacle.[1]

In those places where, for the greater safety of the Holy Eucharist, the bishops have ordered the tabernacle to be entirely of metal, their directions are absolutely binding, as Cardinal Gasparri teaches.[2] It is most desirable for the tabernacle to be actually a steel safe, which cannot be pierced or broken by the means commonly used by thieves, and for it to be securely fastened by iron staples either to the lowest gradine of the altar or to the wall at the back. Steel safes of this kind should be manufactured in the form of a tabernacle, and then finished with marble or other ornamentation, so as to have that artistic appearance which is required by canon 1269, §2. If this method is not employed, the safe should be made to fit into the existing tabernacle.

(ii) The use of very strong steel tabernacles of this kind is an additional safeguard for the Holy Eucharist, and they should be introduced into new churches. But the Sacred Congregation does not order them in churches which already have tabernacles of some other type, provided these arc proved to be sufficiently secure. The bishops are urged to take special care that the tabernacles in use in their dioceses are sufficiently strong to resist sacrilegious profanation, and they should be most severe in ordering those to be removed which do not come up to this standard.

(iii) Various forms were common in the middle ages: pyxes, often in the shape of a dove, suspended from the roof of the sanctuary; armories fixed in the wall of the sanctuary apart from the altar; turrets on the gospel side. These customs may not be restored since the law now requires the tabernacle to be fixed to the altar. At the most, the Ordinary may, for a grave reason, permit the Blessed Sacrament to be removed at night to the sacristy or to a

^‘Conficiatur oportet ex solida materia, singulacquc partes intime inter sc cohaerent, rcscratio maximam exhibeat securitatem ac fortiter ostiolo adhaereat, cuius cardines firmiter sint constituti ac dispositi, qui ipsum ciborio inserant.”

* *De Eucharistia,* II, §994·

strong room or safe built in the wall of the church.[1] What is called the "beehive" shape of tabernacle, common in Roman churches, is not prescribed by the law; nor can it be said that this sort is to be preferred to any other. Canon 1269 directs that it should be of artistic appearance, a matter which can best be left to the architect who designs the altar or church, in order that the tabernacle may be in harmony with the rest of the furniture. If it is a steel safe the exterior may be covered with wood, marble or any suitable material; the external appearance may be round, square, octagonal or anything desired, provided always that the law requiring it to be covered with a *conopaeum* can be properly observed.

### 660.—Fixture of Tabernacle

*A new altar is being erected which will have a tabernacle. It is desired to have a free passage all round the altar; to avoid piercing the "mensa" with staples; ie leave a space behind the tabernacle for a standing crucifix; and to have no gradin. What method can be suggested for fastening the tabernacle securely to the altar, as ordered by recent instructions of the Holy See?*

*S.C. Sacram.,* 26 May, 1938, ad n. 4 (a); *A.A.S.,* 1938, XXX, p. 201: Tabernaculum sit inamovibile et undequaque solide clausum. . . . Optimum sane consilium foret si tabernaculum sit vera arca ferrea . . . eaque validis ferreis seris altari arcte debet devinciri in infimo eius gradu aut parieti adverso.

Canon 1198, §1: Tum mensa altaris immobilis tum petra sacra ex unico constent lapide naturali, integro et non friabili.

(i) We are not aware of any express prohibition against piercing the *mensa* in order to fasten the tabernacle thereto by an iron staple. It may be considered a regrettable necessity and not of sufficient importance to deprive the stone of its "integral" character. The 1958 instruction sanctions a gradine, which to many liturgists is an object of extreme dislike. Cf. Q. 656.

(ii) But there is clearly no obligation to have a gradine to accommodate the fixed tabernacle; the alternative suggested by the instruction—a staple fixed to the wall at the back of the altar—has, nevertheless, certain disadvantages. Accordingly, the only method remaining is to fasten the tabernacle neither to the *mensa,* nor to the wall at the back of the altar, but to the lower structure of the altar. This can be done by means of a rectangular metal plate, a quarter of an inch, or less, in thickness, of the same width as the tabernacle, and long enough to cover the space behind and the thickness of the *mensa.* The base of the tabernacle will be fastened to one arm of this plate, resting upon it as on the horizontal of a bracket; the vertical arm of the bracket will be fastened to the back of the altar, just beneath the *mensa.* This method will be quite safe and secure whilst avoiding the inconveniences arising from fastening the tabernacle cither to the *mensa* or to the wall at the back of the altar; nor will it offer any obstacle to a standing crucifix behind the tabernacle. It has, in fact, some advantages, since the tabernacle standing on the *mensa* needs to be slightly raised in order that the door may open easily without being impeded by altar cloths.

[1] Canon 1269, §3; *Instr,* n. j.

## 661.—Tabernacle Key

*Where is the most recent legislation about the custody of the tabernacle key to be found?*

It is contained in *S.C. Sacram.*, 26 May, 1938, n. 6, c, general rules; n. 7, convent chapels; n. 8, other religious houses; n. 9, private oratories. The instruction is in *A.A-S.,* XXX, 1938, p. 198, and was fully summarized in *rhe ClergyReview,* 1938, XV, p. 170. A translation of the whole instruction was printed in the American *Ecclesiastical Review,* August 1938, and another version, originally in the *Homiletic Review,* was freely distributed by an American Church Furnishing firm, and is no doubt still obtainable from Summit Brass & Bronze Works, 935 Dcmott Street, North Bergen, N.J.

The text of a private decision of the Sacred Congregation, 22 August, 194°, following upon a sacrilegious robbery of the Blessed Sacrament in Ireland, was reprinted in *The Clergy Review,* 1941, XX, p. 89. It was a direction for one particular case, and appeared to modify, in one particular, the terms of the public instruction.

We know of no more recent developments of the matter. In many places local diocesan regulations exist which supplement the instruction, and which must, of course, also be observed.

*In churches where there are several assistant priests, is the law properly observed by keeping the key of the safe {which contains the tabernacle key) within the presbytery in a secret place known only to the clergy?*

*S.C. Sacram.,* 26 May, 1938, n. 6, c: . . . clavis vel ab ecclesiae rectore domi custodiatur aut ab ipso continenter gestetur, amissionis periculo remoto, vel in sacrario, et quidem in loco tuto et secreto, reponatur altera clavi claudenda, quam alteram elavem uti supra rector tueatur.

22 August, 1940, n. 4741/39 (private): . . . clavis tabernaculi extra horas sacrarum functionum non servetur in sacristia, sed apud ipsum parochum. Non solum tabernaculum, sed etiam sacristiae armarium, sit arca ferrea securitatis (safe).

(i) The right and the obligation of holding the key belongs to the rector of the church. He may either keep it in his house or on his person, with every precaution against loss, or he may lock it in a secure and secret place in the sacristy and keep the key of this place at home or on his person. During his absence it may either be committed to another priest, or, if it is kept locked in the sacristy, the key of the place may be left with the sacristan. From canon 1269, §4, the safe custody of the key is a grave matter of conscience, and the rules applying to it arc likewise binding *sub gravi.* He is strictly enjoined by the instruction never to leave the key on the altar or in the tabernacle door, not even during those hours of the morning when the distribution of Holy Communion or other sacred rites are taking place.[1] This does not mean, of course, that he is forbidden to have it on the altar whilst saying Mass—an interpretation which would be absurd—but that

[1] *Instr.* n. 6 c.

he may not leave it there without a custodian in the intervals between various rites. This custom which is now forbidden is by no means uncommon; the key is sometimes placed on the altar for the early Mass and remains there for all the later Masses including the intervals between them. A theft occasioned by this bad practice is mentioned in *Ephemerides Eiturgicae* (lus et Prascis), 1943, p. 8.

Some have suggested that the instruction directs that the key may not be left on the altar except during those hours of the morning when sacred rites arc being performed. The original cannot possibly bear this meaning: "ipsi districte praeceptum ut clavis tabernaculi nunquam super mensa altaris aut in claustro ostioli relinquatur, ne tempore quidem quo mane divina officia ad Sacramenti altare et Sanctissimae Communionis distributio peraguntur".

(ii) The private reply, given on the occasion of a sacrilege in Ireland, improves upon the previous public instruction by requiring the sacristy to have a safe, but the point appears to be irrelevant, so far as the tabernacle key is concerned, since in this particular case it is directed that the tabernacle key is to be kept not in the sacristy but "apud ipsum parochum"; obviously this direction is for the particular instance mentioned, since it specifically selects one out of the three methods contained in the public instruction.

The three alternative directions given are: *(a)* to keep the tabernacle key in the rector's house; (Z>) to keep it on his person; (r) to keep it in a secure and secret place under lock and key in the sacristy, the key of this place being cither as in (47) or (£). The law is, therefore, accurately observed by the method suggested in the question, which has everything to recommend it as being the only practical way of giving a number of priests access to the key of the tabernacle. The practice of hiding the key of the sacristy safe somewhere in the sacristy docs not observe the law.

### **662.**—Safe Custody of Blessed Sacrament

*Assuming that the tabernacle is lawfully constructed, and the key safely kept, does the law impose any additionalprecautions?*

The instruction of the *Congregation of the Sacraments,* 26 May, 1938, mentions various precautions for safeguarding the Blessed Sacrament. They are, for the most part, ordinary rules of prudence, such as seeing that the church is securely locked at night, and they vary with circumstances of place and time, including modern devices for detecting thieves at night. In city churches, at least, there is required a custodian exercising continuous vigilance; in country churches the vigilation may be entrusted to a person living near by. It is recommended that sacred vessels of great value should not be used habitually for reserving the Blessed Sacrament, but introduced only on the occasion of greater feasts.

To secure effectively the purpose of the decree, powers of Ordinaries arc considerably strengthened. On their visitations, and at other times, they should rigidly enforce the law, and they may not only apply the sanctions of canon 2382 against negligent parish priests, but also punish with fitting penalties exempt religious of both sexes, a power to be used cumulatively with the religious superiors.1 Except for the gravest reasons, they should

1 *Instr,* n. io a, c.

refuse to endorse petitions for reservation on behalf of churches and oratories in which it is not permitted by the common law, and they may revoke a faculty obtained by Apostolic induit as often as they observe that conditions arc lacking for the safe custody of the Blessed Sacrament.[1] In every case of sacrilegious theft the Ordinary is required to start a process against whatever priest, secular or regular, was responsible for the safe custody of the Blessed Sacrament, and to forward the minutes to Rome. This process is against the custodian (e.g. the parish priest) even though the actual negligence may be on the part of some other priest.

### 663.—Position of Tabernacle

*Occasionally, in parish churches, the Blessed Sacrament is reserved at some altar other than the high altar of the church. Is this practice considered more liturgically correct?*

Canon 1268, §2: Custodiatur in praecellcntissimo ac nobilissimo ecclesiae loco ac proinde regulariter in altari maiore, nisi aliud venerationi et cultui tanti sacramenti commodius et decentius videatur, servato praescripto legum liturgicarum quod ad ultimos dies hebdomadae sanctae attinet.

§3. Sed in ecclesiis cathcdralibus, collegiatis aut conventualibus in quibus ad altare maius chorales functiones persolvendae sunt, ne ecclesiasticis officiis impedimentum afferatur, opportunum est ut sanctissima Eucharistia regulariter non custodiatur in altari maiore, sed in alio sacello seu altari.

§4. Curent ecclesiarum rectores ut altare in quo sanctissimum Sacramentum asservatur sit prae omnibus aliis ornatum, ita ut suo ipso apparatu magis moveat fidelium pietatem ac devotionem.

The canon repeats previous decisions of the *Congregation of Kites.* The high altar is the normal place for the tabernacle in a parish church, unless exceptionally some other altar is more suitable and fitting. This might happen on occasion, and for the same reason that makes reservation of the Blessed Sacrament in a side chapel "opportune" in a cathedral or collegiate church, namely, the occurrence of a function, such as Confirmation, which is inconsistent with the reverence due to the Blessed Sacrament. In a cathedral, the occasions when the bishop is seated with his back to the high altar, or when complicated rites arc being performed, arc so frequent that the Blessed Sacrament is habitually reserved elsewhere. Similar reasons may, of course, be present habitually in a parish church, but it is rather difficult to imagine this happening. It is sometimes said, in defence of the practice, that the tabernacle at a side altar is more securely constructed; this is not a good reason for breaking the law, since it should be possible to remedy the defect in the tabernacle at the high altar. On the other hand, a sufficient cause would exist if, for some special reason, the high altar is less beautiful and ornate than an altar in a side chapel. This could happen in an unfinished church which has a fine Lady chapel but a temporary chancel and high altar of mean appearance. Another good reason would exist in the case of a parish church, the chancel of which attracts numbers of curious sightseers causing disturbance and distraction. It is quite certain that a desire to be

[1] *Ibid,* d.

more liturgical must regard the law of canon 1268, which requires *regulariter* that the Blessed Sacrament should be reserved at the high altar.

### 664.—Interior of Tabernacle

*The correct method of decorating the interior of a tabernacle is variously interpreted. What are the exact requirements of the law?*

Three replies of the *Congregation of Kites* describe the manner of lining die tabernacle: "Utrum sit de necessitate interiora Tabernaculorum panno serico albo contegere, an aequivalcat et sufficiat simplex auratura? *Resp.* Negative ad primam partem; Affirmative ad secundam."[1] "Num . . . debeat omni ex parte interius panno serico albi coloris vestiri, vel possit illud ex laminibus deauratis tantum ornari? *Resp.* Nihil obstare quoad utrumque modum."[2] "Utrum sacrum Tabernaculum in interiori parte deauaratum esse debeat, vel saltem albo serico contectum . . . ? *Resp.* Affirmative."[3]

The law insists, therefore, on a lining of silk or gold. The preference in this country seems to be for silk. It may be draped or stretched on wooden boards—cedar wood is generally used as it is supposed to resist moth. The useful *Directions for Altar Societies,* authorised by Cardinal Vaughan,[4] speaks of a lining of gold (solid or gilt plates), but such is rarely seen. Wc think a gilt wooden lining is permissible as an alternative to silk, and many of the commentators take it for granted that this is the meaning of "auratura" in the decrees, e.g. *TAmi du Clergé,* 1911, p. 430, "bois dorée".

What is not required at all, but merely tolerated, is a hanging curtain within: it may be used in addition to the *conopaeum* but is not a substitute for it.[5]

### 665.—Tabernacle Conopaeum

*As there are many different views advanced by writers on the subject, couldyou give the text of the liturgical law as io what is and what is not allowed?*

The conflict of opinion is due to the fact that many tabernacles have been permanently constructed in such a way that the full observance of the law is impossible, and in such cases either the law itself is modified or the liturgical authors sanction departures from it, on the principle that no positive law binds *sub gravi incommodo.* If a new tabernacle is being constructed the law should be strictly observed; but if one is already in existence advantage may be taken of the wise toleration of the Church, unless it can easily be altered to comply with the law.

A full compliance with the rubrics requires that the tabernacle should be completely covered with a veil, and not merely have a curtain hanging before the door. On this there is no possible room for doubt. Canon 1269 directs that it should be "decenter ornatum ad normam legum liturgicarum",

XN. 3254-7.
1 N. 3709.
' N. 4055-4·
4 Bums Oates & Washboumc (1935), p. 12.
' N. 3150.

and these laws are contained in the official liturgical books, supplemented by the directions of the *Congregation of Rites.* The Roman Ritual, IV, i, 6, calls this veil "conopaeum": "tabernaculum conopaeo opertum". The English word "canopy" denotes something much larger and is used as a synonym for baldacchino, but *de verbis non est disputandam.* About the thing itself there is no dispute and it is described by De Herdt as "Conopaeo decenter opertum, id est, velo ad instar tentorii, ex serico lino, cannabe, gossypio aut lana confecto . . ,",[1] a description which agrees with that given by every liturgical writer on the subject. It is a tent-llkc veil covering the whole tabernacle.

Nor can it be said that this direction of the Roman Ritual is merely of antiquarian interest and is no longer insisted upon. Several directions of the *Congregation of Rates* order its use: "Num Tabernaculum, in quo reconditur SSmum Sacramentum Conopaeo cooperiri debeat, ut fert Rituale? *Resp.* Affirmative."[2]

"R. D. Archicpiscopus . . . exponens usum ab antiquo tempore vigere non cooperiendi Conopaeo Tabernaculum, in quo asservatur SSmum Eucharistiae Sacramentum, sed intus tantum velo pulchriori serico, saepe etiam argento aut auro intexto ornari; a S.R.C. humillime petiit: Num talis usus tolerandus sit; vel potius exigendum ut Conopaeum, ultra praedictum velum vel sine eo, apponatur juxta praecriptum in Rituali Romano ? S.C. . . . respondendum censuit: Usum veli praedicti tolerari posse; sed Tabernaculum tegendum est Conopaeo, juxta praescriptum Ritualis Romani. Atque ita respondit et servari mandavit."[3]

"An Tabernaculum Sanctissimi Sacramenti argento, auro vel alia pretiosa materia confectum, eo ipso a generali obligatione illud tegendi Conopaeo sit immune? Et S.R.C . audita sententia alterius ex Apostolicarum Caeremoniarum Magistris, ad relationem Secretarii, sic respondendum censuit: Servetur praescriptum Ritualis Romani."[4]

"An servar' possit consuetudo non adhibendi conopaeum quo tegi debet tabernaculum, ubi asservatur SSmum Sacramentum Eucharistiae. *Resp.* Negative, et servetur Rituale Romanum et Decreta."[5]

Liturgical writers, bearing in mind the repeated directions of the Holy See, unanimously insist on this veil: "A tabernacle should be free all round so that it may be completely covered by the veil. . . . The veil is a more important and surer sign of the Presence than a sanctuary lamp. The popular belief that a handsome door dispenses from its use is erroneous, and the substitution of narrow strips of transparent lace is an unworthy subterfuge."[6] "The exterior of the tabernacle is to be covered with cloth of silk or other fabric, and it is supposed that the tabernacle stands free on the altar and can be covered entirely with a cover of the shape of the small cover for the ciborium."[7] "Il y aurait faute venielle à violer sciemment et volontairement la rubrique du Rituel qui l'impose."[8] "The form of the canopy is that of a tent, the folds of which are gathered at the top under the cross which

[1] *Sacrae Uturgiae Praxis,* 1, n. iSo, 7.
[2] 24 July, 1855, n. 3135.10.
[3] 26 April, 1866 n. 3150.
[4] 7 August, 1880 n. 3520.
[5] i luly 1904, n. 4137.
[6] Rev. J. P. Redmond in *The Clergy R«*
[7] Woywod. /4 *Praefica/ Commentary on t*
[8] *I'Ami du Clergi,* 1910, p. 28S.

surmounts the tabernacle and then allowed to fall broadly to its base."[1] "The properly constructed tabernacle should place no obstacle to a full compliance with the rubric, and, we might add, it ought to be the concern of the priest who furnishes a new altar to make sure that it is so constructed."[2] Finally, the useful summary of instructions compiled under the direction of Cardinal Vaughan states: "The *conopaeum* is a tcnt-like veil covering the *entire* tabernacle (front, back, sides and top). . . . Its use is *absolutely obligatory* on any tabernacle that contains the Blessed Sacrament. It is prescribed directly by the rubrics of the Roman Ritual, indirectly by the Code of canon law; and the *Congregation of Kites* has clearly decided that neither custom, nor an inner veil, nor the fact that the tabernacle is of precious material or of rich workmanship, excuses from observing the law. Curtains hanging before the door are not a lawful substitute for the *conopaeum,* and they may be tolerated only when a faulty construction makes a proper liturgical veil impossible."

### 666.—Colour of Conopaeum

*Is there a rule that the colour of the tabernacle "conopaeum" must be violet whenever a Kequiem Mass, even the "Missa Quotidiana", is celebrated at an altar on which the Blessed Sacrament is reserved?*

J.R.C., 21 July, 1855, n. 3035.10: Cuiusnam coloris esse debeat? aliis opinantibus, ut Barufaldus, Conopaeum debere esse coloris albi, utpotc convenientis SSmo Sacramento; aliis autem, ut Gavantus, eiusdem coloris, cuius sunt pallium Altaris et cetera paramenta pro temporis festique ratione, praeter colorem nigrum, qui mutatur in colore violaceo in excquiis defunctorum. *Kesp.* . . . utramque sententiam posse in praxim deduci, maxime vero sententiam Gavanti, quae pro se habeat usum Ecclesiarum Urbis.

i December, 1882, n. 3562: luxta Decreta . . . vetitum est in Excquiis et in Commemoratione Omnium Fidelium Defunctorum nigro panno et pallio eiusdem coloris ornare Altare, in quo asservatur SSmum Sacramentum. Quum vero in nonnullis locis . . . idem SSnium Sacramentum asservetur vel in maiori Altari Ecclesiae, vel in unico Altari, aliis deficientibus; hodiernus eiusdem Dioceseos Episcopus . . . exquisivit num prohibitio, de qua supra, rcspiciat Ecclesias ubi asservatur SSmum Sacramentum in Altari, quod maius vel unicum est. *Kesp.* In casu, sacri Tabernaculi saltem Conopaeum esse debet violacei coloris.

These directions refer cither to a funeral Mass, *praesente cadavere* or to the Masses on All Souls' Day. N. 3562 requires the colour to be violet, whenever a black antependium is tolerated in special circumstances.[3] N. 3035 permits either white or the colour of the day, with the exception of violet for black, and the commentators accordingly formulate the rule in this sense: the colour of the *conopaeum* may be cither white or the colour corresponding to the office or Mass, black always excluded.[4]

[1] *Ecclesiastical Review,* 1904, XXXI, p. 125; 1947, CXVI, p. 72.
[1] *Irish Ecclesiastical Record,* 1922, XIX, p. 543-
[3] Cf. Q. 675.
[4] *Cf.* O'Connell, *The Celebration of Mass,* III, p. 39; III, p, 169; *Homiletic Review,* November 1940, p. 210.

There are no directions, so far as we are aware, which apply expressly to the colour of the *conopaeum* during a votive Requiem, but from the above it may be deduced that there is no strict rule requiring the colour to be violet, though this is, on the whole, preferable.

## 667.—Exposition Throne

*What is the law about the throne? Is it correct for the throne to be a movable one?*

The word "throne", in solemn exposition of the Blessed Sacrament, conveys the idea of a regal seat, surmounted by a canopy, upon which the king may be seen by his people and receive their homage. The *Clementine Instruction* for the XL Hours, on which so many of the regulations for what we call Benediction arc based, states in §5: "Over the altar, in a prominent place, a throne with a canopy in white is to be placed, and on its base is spread a corporal for the monstrance to stand on. In front no ornament is to be placed which would impede a view of the Blessed Sacrament."[1]

The rubrics and directions of the *Congregation of Rifes* are sometimes conflicting, nor is it desirable to have a rigid uniformity down to the smallest detail of construction and appearance of the throne, but it docs seem that a movable throne more easily satisfies the requirements of the law. It is, in the first place, difficult so to arrange the position of tabernacle, cross, and permanent throne, as not to offend against the rubrics and the requirements of artistic construction. Moreover, since the throne is used only during the time of exposition, it seems that it should be removed at other times: it is definitely forbidden to place a crucifix in it.[2] The rubrics of the *Ritus Servandus* indicate that a movable throne is to be used, and the *Instructions for the use of Altar Societies,* issued by Cardinal Vaughan, are definitely against a fixed throne, except in chapels where there is perpetual adoration: "The tabernacle should not be surmounted by a permanent or fixed throne for exposition. Such a structure is no part of the construction or ornamentation of an altar or of the tabernacle. ... It frequently interferes with the correct position of the cross or prevents the tabernacle being covered on all sides by the conopaeum as the rubrics require. . . . This structure (the throne) consists of a base on which the monstrance will stand, and a back surmounted by an overhanging canopy or baldachin. It may be made in stone, metal or wood, and may have side curtains of white silk. The most practical kind of throne, because it can be moved easily, is made of wood, gilt, the back and canopy being covered with white silk, brocade, etc., ornamented with gold or coloured braid or fringe or with embroidered symbols of the Blessed Eucharist."[3]

But it must be said, nevertheless, that a permanent throne is not forbidden. This is clear from η. V of the well-known scries of answers given to the master of ceremonies of Westminster Cathedral, 27 May, 1911, though the previous η. IV bears a sense unfavourable to a permanent throne.

[1] Eng. tr., O'Connell, p. 3.

[2] Cf. 5.R.C., 3576.3; 4136.2: Potest (crux) etiam collocari super tabernaculum, non tamen in throno ubi exponitur Sanctissimum Eucharistiae Sacramentum.

[3] P. 17.

"IV. Quum difficile sit habere thronum expositionis inamovibile, nisi Crux ponatur in eo; quaeritur utrum liceat super Tabernaculum erigere inamovibile thronum, seu parvum ciborium fixum pro expositione Sanctissimi Sacramenti; an debeat erigi thronus tantummodo propter expositionem, et amoveri post expositionem? *Resp.* Negative ad primam partem; affirmative ad secundam.

V. Numl iceat thronum expositionis construere in muro Altari seiuncto? *Resp.* Affirmative, dummodo thronus expositionis haud nimis distat ab Altari, cum quo debet quid unum efficere."[1]

If the altar itself is surmounted by a canopy, it appears that it is not strictly necessary to have a throne at all. The reply given to Westminster, 27 May, 1911, expressly agreed: "Utrum alio throno, seu baldachino parvo, opus sit ad expositionem Ssmi Sacramenti, ubi magnum baldachinum, seu ciborium invenitur. *Resp.* In casu servari potest consuetudo, quae viget." This text is found in η. VI in the original document,[2] but it is not in the text published in *Decreta Authentica,* η. 4268; it is also not in accordance with the *Clementine Instruction,* §5. It is, we believe, customary in this country to employ a throne even when the altar has a canopy.

The permanent throne is a feature of nearly every high altar in England, so much so that they often appear to be constructed as a series of ledges or steps leading up to it. Without saying, by any means, that the permanent throne is wrong and forbidden, it seems clear that the movable throne is to be preferred.

**668.—** Exposition Thabor

*Is the use of a thabor correct for short expositions of the Blessed Sacrament?*

(i) This article, which is named after Mt Thabor, the traditional site of the Transfiguration, is about the size of a square missal stand, made of some good material and ornamented, but with no canopy or back veils. It is used for short expositions or on altars which have no permanent throne, in order to elevate the monstrance or to show special reverence to the Blessed Sacrament.

There is no law expressly forbidding its use, and occasionally writers of some authority have a good word to say for it. Dom Roulin,[3] for example, gives two illustrations of a thabor, one of which is in use at Westminster Cathedral when Benediction is given at the High Altar, though we think this is more correctly described as a movable throne. It is not forbidden expressly, since a throne is not required for a short Benediction consisting of *Tantum Ergo* and following prayers, which may take place at the end of a procession or some other function. On such occasions, even though the altar has no canopy, the rubrics, e.g. *Rituale Romanum,* IX, v, 5, direct the monstrance containing the Blessed Sacrament to be placed on the altar for *Tantum Ergo* and following prayers.

(ii) Though not forbidden for a short Benediction, as described above, the thabor is not in good repute amongst the best writers. In the first

» N. 4268.
* Cf. *Coltaf. Brttgen.,* 19x1, p. 548.
• *Nos Eglises,* p. 574·

place it is wholly unnecessary, since the altar stone covered with a corporal is the most sacred and dignified place for the Blessed Sacrament to rest. "There is no liturgical warrant for the use of a thabor on the table of the altar, and it is most inconvenient in practice."[1] ". . . le thabor est une invention moderne ct maladroite, que Barbier de Montault n'a pas hésité a qualifier de stupide ct d'indécente".[2]

A second and more serious objection is that one often sees it used, not for the short Benediction from *Tantum Ergo* onwards, but on occasions when it is indisputable that the law requires a throne for the Blessed Sacrament; the thabor has come to be regarded as the equivalent, which it certainly is not.

But there is no reason why a thabor of good workmanship and design should not be fitted with a suitable canopy. It will then be a movable throne which, in our view, is preferable to the fixed and permanent throne usually constructed in the reredos of the altar. This is, in fact, directed by the *Ritus Servandus,* p. 13:"... adhiberi debet thronus tantummodo propter expositionem et postea amoveri".

## §3. ALTAR FURNITURE

### 669.—The Altar Cross

*What is the correct character and position of the altar cross? Is it lawful to place it on the top of the tabernacle?*

Probably the most satisfactory answer to this, and to a variety of other questions arising from liturgical law, is to distinguish between what is absolutely correct, what is tolerated, and what is not tolerated. The ardent liturgist sometimes errs in confounding the first and the second.

(i) "Super altare collocetur Crux in medio."[3] "Supra vero in planitie altaris adsint candelabra sex argentea, si haberi possunt: sin minus cx aurichalco, aut cupro auratro nobilius fabricata, ct aliquanto altiora, spectabilioraque his, quae ceteris diebus non festivis apponi solent, ct super illis cerei albi, in quorum medio locabitur crux ex eodem metallo, et opere praealta, ita ut pes crucis aequet altitudinem vicinorum candelabrorum, ct crux ipsa tota candelabris superemineat cum imagine sanctissimi Crucifixi, versa ad interiorem altaris faciem."[4] A correct altar cross, therefore, is a crucifix which is of the same character and design as the candlesticks, made of metal, dominating the altar. It is placed on the altar itself in the middle of the candlesticks. The directions are very simple to observe, and the following texts, chiefly from the *Congregation of Rites,* teach us to what extent a departure from them is permissible.

(ii) There appears to be no prohibition against the use of wooden candlesticks, as is customary in Franciscan churches, in which case, one supposes, the crucifix may also be of wood.[6] The altar crucifix is not

[1] *Directions for Altar Societies,* p. 17.
[2] *L'Ami du Clergé,* 1946, p. 109.
[3] *Rubricae Generates, xx.*
[4] *Caerem. E/)p.,* I, xii, II.
[6] *Coll. Namurcenses,* 1933, p. 117.

insisted upon if there is a prominent sculpture of the crucifixion behind the altar or on the reredos: "Similiter si in Altari, in quo adest magna statua SS. Crucifixi, sit ponenda alia crux, dum celebratur Missa? *Resp.* Est sufficiens, et non indiget alia cruce."[1]

De Herdt extends this principle to the case where the Crucifixion is painted on the altar piece: "Et idem dicendum est de cruce depicta in maiori tabula altaris, dummodo Crucifixus primum locum obtineat prae ceteris omnibus quae in eadem tabula exprimuntur."[2] His authority for this is Benedict XIV in a constitution which is not reprinted in Gasparri's *Fontes.* But one cannot extend this toleration to a representation of the Crucifixion in a stained-glass window behind the altar: "Imagines in vitriis fenestrarum depictae nihil cum Altare commune habent."[3]

The chief difficulty, calling for toleration of certain practices, arises where the altar, usually the high altar, has a tabernacle. It can be met by making the table of the altar sufficiently deep to allow for a correct crucifix to stand behind the tabernacle. If this is not possible, one alternative is to use a kind of processional cross, the shaft of which rests in some attachment at the back of the altar, a method recommended by Geoffrey Webb.[4] The only other alternative is to use the tabernacle as a base for the crucifix. "An Crux cum imagine Crucifixi, in medio Altaris inter candelabra collocanda, etiam in Altari, ubi Sanctissimum asservatur, collocari possit immediate ante eius tabernaculum; aut super ipsum, vel in postica eius parte? *Kesp.* Crux collocetur inter candelabra, nunquam ante ostiolum tabernaculi. Potest etiam collocari super ipsum tabernaculum, non tamen in throno ubi exponitur Sanctissimum Eucharistiae Sacramentum."[5] It is not clear on what authority some interpret this permission as applying exclusively to a fixed crucifix rising from the dome of the tabernacle. Geoffrey Webb,[6] quite rightly in our opinion, says that this concession had in mind the flat-topped tabernacle, and the wording of the instruction is sufficiently clear; it is quite lawful to place the crucifix on the tabernacle.

(iii) As we have seen, the law supposes a large and prominent crucifix. The very small one which sometimes surmounts the tabernacle itself is insufficient, not because it is on the tabernacle, but because it cannot easily be seen. "An, et quibus remediis removendus sit abusus collocandi parvam Crucem vix visibilem, vel supra Tabernaculum, vel supra aliquam minorem tabulam sitam in medio altaris, loco Crucis collocandae inter Candelabra, ut Rubrica praescribit. *Resp.* Reprobandum abusum; et ubi invaluit, Ordinarius loci provideat juris et facti remediis. Quod si ob aliquam causam accidcntaliter removenda sit Crux sita inter candelabra, alia tempore Sacrificii apte apponatur inferius, sed visibilis tam celebranti quam populo."[7] It is forbidden, of course, to place the crucifix in front of the tabernacle.[8] Lastly, the very common abuse of using the permanent exposition throne for the crucifix cannot be tolerated: "Num tolerari potest usus statuendi Crucem super throno, et in eo praecise loco, super quo publicae adorationi

[1] 16 June, 1663, η. 1270.2.
[2] *Sacrae IJtiirgiae Praxis,* I, § 181.
[3] 10 November, 1906, η. 4191.4.
[4] *Tbe Lih/rgical Attar,* p. 52.
[5] ii June, 1904, n. 4136.
[6] *Op.cit.,* p. SJ.
[7] 17 September, 1822.7; "· η· 1270.1.
[8] N. 4136.2

in Ostcnsorio exponitur SSma Eucharistia? Et quatenus affirmative, num tolerari possit usus Crucem ipsam superimponendi Corporali, quod Expositioni inservit? *Resp.* Negative in omnibus."[1]

### 670.—Position of Altar Cross

*Tbe rubrics of the Missal occasionally direct the eyes to be raised to heaven, and S.R.C., 22 July,* 1848, *asserts that at these times the celebrant is to look at the cross. May n>e conclude that this direction is "praeter" not "iuxta rubricas"? If the cross is not raised above the altar, does it suffice to look at tbe cross?*

*Rif. Celebr. Miss.,* VIII, 4: . . . elevansque ad coelum oculos et statim demittens dicit: ct elevatis oculis in coelum. . . . Cf. also XII, i.

*S.R.C.,* 22 July, 1848, n. 2960.5: Denegatur ab aliquibus ecclesiasticis obligatio Crucem adspiciendi dum a Rubrica sacerdoti celebranti iniungitur in Missa oculorum elevatio. Quidnam dicendum de huiusmodi opinione? *Resp.* Iuxta rubricas, in elevatione oculorum Crucem esse aspiciendam.

*Caerem. Epp.,* I, xii, 11: Supra vero in planitie altaris adsint candelabra . . . in quorum medio locabitur crux ex eodem metallo, ct opere praealta, ita ut pes crucis aequet altitudinem vicinorum candelabrorum, et crux ipsa candelabris superemineat. . . .

(i) The direction of the *Congregation of Rites* is, as the reply affirms, "iuxta rubricas", since it takes for granted that the altar furniture will be liturgically correct, with the cross raised above the altar. It is, in fact, hard to see how, in these circumstances, it is possible to raise the eyes to heaven without at the same time looking at the cross.

(ii) But if the altar is incorrectly furnished, with the cross placed, perhaps, below the level of the eyes, we agree with all the commentators consulted that it does not suffice to look at the cross, but that the eyes are to be raised as the rubrics of the missal direct. Thus O'Connell, *The Celebration ofMass,* II, p. 21 ; Aertnys, *Compendium,* §20; O'Callaghan, *Sacred Ceremonies ofRow Mass,* p. 9.

### 671.—Cross during Benediction

*Should the altar cross be removed whenever the Blessed Sacrament is exposed in the monstrance?*

(i) In the common law of the Church, it may be removed or not according to local custom. The only relevant instruction of the Holy See on this point is primarily concerned with Mass *coram Sanctissimo,* as in the Mass of deposition at the conclusion of the XL Hours. "SSmo Sacramento exposito, debetne in Altari collocari Crux, etiam post tempus Sacrificii? *Resp.* Etsi aliquando praeceperit haec S.R.C. quod in altari ubi est publice expositum SSmum Sacramentum, tempore sacrificii, Crux de more collocetur, non est tamen in suo robore observantia talis praecepti. Et sane Patriarchales Ecclesiae Urbis oppositum servant; supervacaneam enim adiudicant Imaginis exhibitionem ubi Prototypus adoratur. Et hac de causa Instructio

[1] *z* June, 1883, n. 3576.3.

pro Oratione quadraginta horarum Clementis XI, Benedicti XIII et Clementis XII Summorum Pontificum iussu edita, sub silentio praeterit an locanda rcmovcndave sit huiusmodi crux, relinquens quemlibet in sua praxi."[1]

Actually, in the *Clementine Instruction*, the point is mentioned to this extent: §VI, dealing with the preparation of the altar for the Mass of exposition, mentions the cross, but in later sections dealing with the Mass of deposition nothing is said about its removal. If during the Mass itself, when the rubrics normally require a crucifix, it may be removed or not according to local custom, *afortiori* the rule may be followed during a period of exposition, no matter what its length may be, and the above decision may be applied to the popular rite of Benediction.

Owing to the liberty permitted, there is naturally some variety of opinion amongst the writers. Some direct that it should be removed, e.g. *Collationes Namnrcenses,* 1953, p. 116; others say that it is more usual not to remove it, e.g. *Directions for the Use of Altar Societies*, 4th cd., p. 24. The correct answer, it seems to us, should apply to Benediction the ruling given by 5.R.C., n. 2365, for the Mass of deposition: local custom may be followed in removing or retaining the crucifix, for it is quite certain that no law orders it to be removed.[2]

(ii) Local legislation often determines exactly what should be done, as we find in the *Ritus Servandus* which must be followed in this country. Rubric n. 3, p. 13, of the 1928 edition directs the cross to be removed during Benediction, and the rule is obligatory in all places under the jurisdiction of the bishops who have ordered the book to be used.

A practical consideration which, no doubt, influenced the decision in n. 2365, is the fact that, in the larger churches, the high altar crucifix may sometimes be a massive article of considerable weight, making its removal somewhat difficult. If this should happen, in localities where a diocesan regulation directs its removal, the non-observance of the law is easily tolerated on the principle that a positive law does not bind *cum gravi incommodo.*

### 672.—Blessing of Altar Crucifix

*is the appropriate blessing to be usedfor the altar crucifix?*

*S.R.C.,* n. 2143 : An Cruces Altarium seu Processionum sint benedicendae de praecepto? *Resp.* Negative. An, si non de praecepto, possit simplex sacerdos eas benedicere private et non solemniter? *Resp.* Affirmative.

N. 3524, iv, 2: Quando Crux praesertim parva cum imagine SSmi Crucifixi est benedicenda, quaeritur: An sumenda sit formula benedictionis novae Crucis; vel potius formula benedictionis Imaginum Domini Nostri Jesu Christi? *Resp.* Negative ad primam partem; affirmative ad secundam.

From the above replies, there is no strict obligation to bless the altar crucifix at all, though an exception must be made, it appears, from the words of the Pontifical, for the crucifix on an altar which is about to be consecrated. If it is to be blessed, the solemn public rite is reserved to the

[1] 2 September, 1741, n. 2365.1.
[1] *Rpbtmerida Liturgicae,* 1925, p. 327.

Ordinary, both from *S.R.C.,* n. 2143, an^ from the opening rubric in *Rituale Romanum,* VIII, xxiv and xxv.

A doubt remains as to which of these two formulae should be used, *Benedictio Crucis* (cap. xxiv) or *Benedictio Imaginis,* etc. (cap. xxv). *S.R.C.,* n. 3524, directs the latter, particularly if the crucifix is small; and since the altar crucifix is usually small, the writers usually direct the *Benedictio Imaginis* for its blessing: Croegaert, *Ldtargicae Institutiones,* De Rebus, n. 488; O'Connell, *Celebration of Mass,* I, p. 245 ; *Irish Ecclesiastical Record,* December 1936, p. 655.

If, however, this reply, n. 3524, is rightly interpreted, it would appear that the *Benedictio Imaginis* must always be used for all crucifixes large or small, in which case the preceding formula *Benedictio Crucis* is for use when a cross has no figure. The word "praesertim" does not, in fact, make this direction quite clear, since one might conclude that it did not apply to large crucifixes. In our view, this conclusion is not correct, since the wording of the first formula makes no reference to the figure or image; we think that the appropriate blessing for all crucifixes, large or small, is the second formula, cap. xxv.

### 673.— Relics

*I prefer to place reliquaries containing relics, which are not notable ones, between the candlesticks on the altar, instead offlower vases, on the chieffestivals. May they so remain, not only during Mass but throughout the day?*

The placing of relics between the candlesticks is a good custom which, judging from the illustration of an altar in every Roman missal, is to be reckoned the normal practice. Between the candlesticks is the correct place for them and, during Mass, when there are lighted candles on the altar, the law on this matter is observed. Several decrees *S.R.C.* require two lights before exposed relics, e.g. "Num Thecae deauratae Sanctorum Reliquiis addictae ad Altaris ornamentum, inter Candelabra collocatae et apertae singulis diebus, sine lumine, sic permanere possint. *Resp.* Ante sacra Lipsana exposita saltem duo lumina, ex Decretis, collucere debet."[1] Therefore, if no lights are kept burning throughout the day, the reliquaries should be covered with a veil, as is the custom at Westminster Cathedral; or, alternatively, a veil could be arranged within the reliquary behind the glass. It appears to be quite irrelevant whether the relics are "insignes" or not, when they are exposed for veneration in a church. The distinction is employed when it is a question of keeping relics in a private house; canon 1282, §2: "Reliquiae non insignes debito cum honore etiam in domibus privatis servari picque a fidelibus gestari possunt."

### 674.— Altar Linen

*It is customary for corporals, pacificators, and palls to receive a three-fold washing by a cleric in major orders. Is tb/s of strict obligation? Is an Apostolic induit permitting nuns to perform the first washing still in force after the Code's publication?*

[1] 12 August, i8j4, n. 3029.13.

Canon 1506, §2, directs that the water used in the first washing should be put into the sacrarium or on the fire. More than one washing is, therefore, contemplated. Some liturgical writers assume that there must be three washings, and they discuss such questions as the lawfulness of the second and third being done by someone not in major orders. But they do not cite any authority or legal text directing three ritual washings. So far as we are aware there is none, and the obligation of washing three times must be traced, if it exists, to customary law.

From canon 4 Apostolic induits, still in use and not revoked, remain in force unless they are expressly revoked by the canons of the Code. Examples of revocation in the Code may be seen in such canons as 654, or 964.4. The revocation is expressly mentioned by the use of such words as *revocato quolibet contrario privilegio* or *revocato quolibet induito Superioribus concesso.* Canon 1306, §2, reaffirms the rule that religious may not wash these articles until they have first been washed by a cleric in major orders, but there is no phrase revoking existing induits. Therefore they remain in force. Cf. Cicognani, *Canon Law,* p. 481.

### **675.**—Black Altar Frontal

*Is the black altar frontal (antependium, pallium) ever permitted at an altar where the Blessed Sacrament is reserved?*

*S.K.C.y* 20 March, n. 3201, x: Potestne adhiberi Pallium nigri coloris in solemni Commemoratione et Excquiis Defunctorum ad Altare SSmi. Sacramenti? *Resp.* Negative.

i December, 1882, η. 3562: luxta Decreta . . . vetitum est . . . in quo asservatur SSmum Eucharistiae Sacramentum. Quum vero in nonnullis locis Dioecesis Ncsqualien. Idem Sanctissimum Sacramentum asservetur vel in maiori Altari Ecclesiae, vel in unico Altari, aliis deficientibus; hodiernus eiusdem Diocescos Episcopus ab eadem Sacra Congregatione exquisivit num prohibitio, de qua supra, rcspiciat Ecclesias ubi asservatur Sanctissimum Sacramentum in Altari, quod maius vel unicum est. *Rcsp.* In casu, sacri Tabernaculi saltem Conopoeum esse debet violacei coloris.

Many liturgical writers stress η. 3201 without any explicit reference to n. 3562; or, if they refer to the latter, they refrain from pointing out its content: their view may be that this decree merely directs that the *conopaeum* may never be black under any circumstances, without modifying the previous direction of n. 3201.

But it seems quite clear to us that an exception to the ruling of n. 3201 is given in n. 3562, the meaning of the latter being that a black frontal may be tolerated for solemn Requiem functions at an altar upon which the Blessed Sacrament is reserved, if it is the High Altar or the only one in the church. This is the interpretation given by Callewacrt, *De Missalis Romani Uturgia* (De Rebus), ed. 1937, n. 487, and by Dr Piérard, "L'ornementation de l'autel" in *Collationes Namurcenses,* 1933, p. 7. We think it is correct, though the force of the word "saltern" seems to be that it is always preferable to have a violet antependium.

### 676.— Altar Charts

*are the rubrical requirements in the three altar charts? Is it permitted to have a set specifically for Requiem Masses, in which the parts not used at these Masses are omitted?*

*Rubricae Generales,* XX: Ad crucis pedem ponatur Tabella Secretarum appellata.

J.R.C., 20 December, 1864, n. 3130.5: An in expositione SSmi Sacramenti . . . amovendae sint omnino tres Tabellae ab Altari Expositionis. . . . *Resp.* Affirmative, excepto Missae tempore.

"Tabella Secretarum", the name given to the article in the Missal rubrics, indicates that originally the prayers printed thereon were those said by the priest secretly; in some places the card is called "canon" since it has rather the same use as the "Canon Pontificalis" at bishops' Masses. It was introduced during the sixteenth century as a single chart, and is thus referred to still in the rubrics of the current missal; a second card was added when St John's gospel was recited, and later a third on the epistle side.

Since the charts are a convenience, rather than an essential part of the altar furniture, Mass may be celebrated without them for any reasonable cause, and the obligation of having them is, in any case, only *sub levs.* The above two references arc the only official texts we have discovered, but the rubricians make many suggestions based on the purpose of the charts. The gospel one is not necessary when the last gospel is proper; whilst they should be of a style and manufacture worthy of their sacred use, excessive ornamentation, whether of the text or of the frame, should be avoided; they may be mounted on leather, or framed simply, or covered with mica; the centre one should not be so large as entirely to hide the tabernacle door; above all, the text must be legible and conveniently arranged.[1]

There are no directions as to what prayers the cards should contain, or in what order they should be arranged; for sung Masses the various intonations of the *Gloria* and *Credo,* and the form for blessing incense would be useful. The best set we have seen, both as regards print and arrangement, is the one issued by the American journal *Liturgical Arts in* 1926.

Hence we can sec no reason why a set should not be issued specifically for use at Requiem Masses. The useful *Directions for Altar Societies* recommends a set framed in black for Requiems, and it would seem to follow' that the text should be appropriate. In any case, an episcopal *imprimatur* is always necessary for these cards: the Ordinat}' may sanction a set of this kind, or he may think it advisable not to encourage innovations.

### 677.— Petitions on the Altar

*Saying Mass in the chafiel of an institution the celebrant frequently finds envelopes containing petitions placed on the altar. I le disapproves of this practice and would be glad of some official text supporting his attitude.*

[1] Cf. *Irish Ecclesiastical Record,* XLVIII, p. 507; *Collationes Namurccnscs,* 1955, p. 109; *Ephemerides Lihergicae* (lus), 1940, p. 105; Gasparri, *De Eucharistia,* §784; Ucurgists and Rubricians *De Ornatu Altaris.*

This is a devotional practice which rests on no very solid foundation, so far as can be discovered. The only official text which can be quoted against it is to be found in the rubric of the Missal which forbids anything whatever to be placed on the altar except what is necessary for the sacrifice of the Mass and the adornment of the altar. "Super altare nihil omnino ponatur, quod ad Missae sacrificium vel ipsius Altaris ornatum non pertineat."[1] These petitions should not be on the altar even during the time when Mass is not being celebrated. It is equally wrong, of course, and a further example of misplaced zeal, for the envelopes to be slipped between the altar cloths.

### 678.— Flowers

IP7w/ *arc the liturgical rules on the use or non-use offlowersfor altar decoration?*

(i) It is not possible to formulate a general principle. Occasionally the rubrics forbid them, cither expressly, as in the *Memoriale Rituum* for Ash Wednesday, or by implication as in the *Caeremoniale Episcoporum* for Requiem Masses. The text usually quoted in recommendation of the use of flowers is in the *Caeremoniale Episcoporum:* "vascula cum flosculis frondibusque odoriferis, seu serico contextis, studiose ornata, adhiberi poterunt".[2] It may be noted that this official text sanctions even artificial flowers and, to this extent, is in conflict with the orders of the Cardinal Vicar of Rome issued in July, 1932, which forbade their use. Happily, the custom of using artificial flowers was never widely spread in this country.

(ii) No explicit directions are given concerning the quantity to be used, but liturgical writers arc unanimous in saying that flowers must be used with restraint, "soberly" as the Cardinal Vicar directs. This is, as a matter of fact, implied in the text of the *Caeremoniale,* by the use of diminutives, "vascula", "flosculi". Without these words the floral enthusiast might be tempted to translate "studiose" as "zealously" or "eagerly"—its correct meaning in the context seems to be "carefully". Restraint and sobriety are characteristic of the whole liturgy of the Western Church, and it rests with the priest in charge of the altar to interpret its application to floral decorations. Abuses arc eliminated as they arise, for example, the illumination of flowers with electric bulbs, forbidden by S.R.C., 17 January, 1908.[3] Many think that the use of growing plants in pots is not against the spirit of this rubric. It is largely a matter of taste.[4]

(iii) The correct place for the vases of flowers is between the candlesticks on the gradine, never on the altar table itself. This has always been rhe rule, and it is contained in the section of the *Caeremonialt Episcoporum* already quoted. It is supported by the *Memoriale Rituum* of Benedict XIII which directs throughout that the flowers arc to be placed between the candlesticks.[5] It is therefore incorrect to place them, as is often done, on the altar itself: "Desuper nihil ponatur, nisi Reliquiae, ac res sacrae, ct pro

[1] *Rubricae Generates,* xx.
[2] I, xii, 12.
[3] N. 4210.1.
*du Clergé,* 1924, p. j 10; 1927, p. 270.
[4] Rite of Candlemas, I, ii, §4,; ; Palm Sunday, III,i, 3.

sacrificio opportunae".1 I do not know anything more explicit than these rather equivocal directions. Certainly, it is not forbidden to place flowers on the sides or on the steps of the altar, provided the rule given in (ii) *supra* is observed, and provided they do not interfere with sacred functions. "An ante ostiolum Tabernaculi SSmi Sacramenti retineri possit vas florum. *Rtsp.* Negative: posse tamen in humiliori ct dccentiori loco."2 Some question whether this rule applies to any except a fixed altar,3 but it seems that the rule should always apply, for to all external appearances there is no difference, and the same honours arc paid to both fixed and portable altars.

(iv) The use of flowers on the altar is forbidden during the funeral office and in the offices *de tempore* of penitential seasons, a general rule which is too well known to call for any citations. But the exceptions to it are quite numerous. Flowers may be placed on the altar on *Gaudete* and *Laetare* Sundays; on St Joseph's altar during the month of March, or on the occasion of a first Communion;4 also, of course, during the XL Hours, if it occurs during Lent. From the strictly legal aspect there is no law forbidding flowers at Mass on Vigils, on Rogation days outside Lent and Advent, on Holy Innocents, and on Septuagesima, Sexagesima and Quinquagesima Sundays, even though violet vestments are used. The rule followed by sacristans and others that flowers are not permitted W'hen violet vestments are worn, though not strictly accurate, does cover the majority of cases and is simple to understand.

The question raised is sometimes an acute practical problem in churches where ladies tend the flowers on the altar. Their help is invaluable and every priest is indebted, like St Paul, to such women who labour with him in the gospel and whose names are written in the book of life. But it is inevitable that a feminine taste in floral decoration, regardless of all rubrics, will invade the sanctuary, unless it is properly restrained by observing the few directions issued by ecclesiastical authority on the subject. The most reliable statement on the whole subject is in *Ephemerides Liturffcae,* 1923, p. 387, and 1938, p. 167, an account based on the discussion at the Pontifical Academy, 31 May, 1925. There is also an excellent formulation of the rules in *I'Ami du Clergé* 1947, p. 492.

## §4. CHURCHES

### 679.—Minor Basilicas

*What exactly are the privileges enjoyed by churches to which an Apostolic induit has granted the title of "minor basilica"?*

Churches arc sometimes spoken of as basilicas because they have some of the architectural features of the Roman patriarchal churches. It is inexact to call them such, unless they enjoy the privilege, which is granted inditfercntly to churches of Gothic or of any non-Roman style.

x *Pontificale, Ordo ad Synodum,* Dies 3, *Exhortatio.*
15.R.C., n. 2067.10.
3 *Ecclesiastical Review,* 1909, XLt p. 97.
4 N. 34-18.11.

Etymologically the word means a "kingly house" as in *Esther,* v, 1, or II *Parai.,* iv, 9. When Constantine gave his Lateran palace to the Church, the name "basilica" was retained, and as the name became attached to other churches, the Lateran was styled "Archbasilica". For some time "basilica" was synonymous with "ecclesia", but the idea prevailed that the name "basilica" belonged properly only to those churches which enjoyed a regal status owing to their association with the sovereign pontiff. These are the major or patriarchal basilicas, at the high altar of which the pope alone may celebrate; they possess holy doors which are opened during the Roman Holy Year of Jubilee, as well as innumerable other privileges.

As may be frequently seen in *Acta Apostolicae Sedis,* the Holy See is accustomed to honour the more important churches of Christendom by granting them the title of *tninor* basilica, employing the customary formula: "Praesentiarum litterarum vi, Ecclesiam 'N.N.' Basilicae Minoris titulo et dignitate, perpetuum in modum, augemus, illique omnia et singula conferimus iura, privilegia, praerogativas, honores, indulta, quae minoribus almae huius Urbis Nostrae Basilicis de iure competunt." It is a formula of ample dimensions but, as a matter of fact, apart from the honour of being closely associated with the Roman pontiff, the privileges are singularly few. It is quite certain that the minor basilica enjoys no precedence over churches of a superior and different category; for example, a cathedral church has precedence over a collegiate church which is a minor basilica.[1]

5.R.C., 27 August, 1936, n. 2744, defined the meaning of the formula as follows: "nomine privilegiorum, gratiarum, praecmincntiarum, exemptionum, indultorum ceterorumque similium, quae continentur in Litteris Apostolicis in forma Brevis expeditis favore alicuius Ecclesiae ad gradum Basilicae minoris elevatae, venire Conopacum, omni tamen auri et argenti ornato ab eo exclusae, tintinnabulum et usum cappae magnae". The *conopaeum* is a ceremonial article resembling a large, half-opened umbrella which is carried in front of the clergy of the basilica walking in procession, and it is accompanied by the ringing of a little bell—*tintinnabulum.* The wearing of *cappa magna* is a privilege which is applicable only to those minor basilicas which have a chapter of secular canons. This decision of .Î.R.C. excludes the use of a *palmatoria* (the bugia or hand-candlestick), but it is often allowed by particular induit. Of more consequence, we think, is the right established by custom of exhibiting the papal arms or *stemma*[2] prominently over the main door of the building, and of printing the same on official documents issued by the Church. This custom stresses the special relationship existing between the Holy Sec and the minor basilica, and portrays more effectively than the other ceremonial uses the character of the privilege enjoyed by a minor basilica.[3]

If, in addition, the church enjoys special facilities for granting indulgences and other spiritual benefits, it is due to particular induits and not precisely to the character of the building as a minor basilica.

[1] Many, *De Lea's Sacris,* n. 64, 3.

[*] Scutum coeruleum, quod in medio prae sc ferat colore argenteo columbam tribus innixam montibus italicis c terra marique prodientibus. Columba autem praefata gestet rostello olivae ram m. Immineant scuto Claves decussatae ac Tiara de more. *A A S* 6i6i, XXXI,ρ. 130.

[3] *Jus Pontificium,* 1926, VI, p *21.*

### 680.—Consecration: Freedom from Debt

*It is commonly understood that a parish church cannot be consecrated until the debt incurredfor its construction has been paid off. Is this a rigid rule?*

Canon 1165, §2: Si prudenter praevideatur ecclesiam conversum iri ad usus profanos, Ordinarius consensum cius aedificationi ne praebeat, aut saltem, si forte aedificata fuerit, eam ne consecret neve benedicat.

§3. Sollemni consecratione dedicentur ecclesiae cathédrales et, quantum fieri potest, ecclesiae collegiatac, conventuales, paroeciales.

*S.R.C.*, 4 May, 1882, n. 3546.2: . . . num licite consecrari possit Ecclesia, quae pertinens ad laicalcm familiam, per vigentes civiles leges potest hereditaria ratione transmitti aut vendi aut in usum profanum converti. *Resp.* In casu, de quo agitur, nisi habeantur sufficientes cautiones, abstinendum ab eiusmodi Ecclesiae consecratione.

Consecration, expressly required by the law for cathedral churches, is recommended wherever possible for parish churches also, but it is clearly incorrect to regard a parish church as lacking some necessary quality until consecrated.

A sacred building solemnly dedicated to the sendee of God should not be exposed to the risk of being converted to some profane use, and only if this danger is removed may it be consecrated or even, under the law of the Code, blessed. It is for the Ordinary to decide, both from canon 1165, §2, and from the fact that the consecration and even the solemn blessing of the Roman Ritual, VIII, xxvii, are resented to him. The law of the Code extends the rule beyond the direction of J'.R.C., n. 3546, by applying it to the blessing of churches.[1]

Being burdened with a debt is not, in the common law, a bar to consecration, except when it is accompanied by the risk of the building's profanation; if, for example, the money for its erection is borrowed from a fund belonging to the diocese, there is no risk at all. One of the few writers to discuss the point rightly observes: "Any safe guarantee securing the church building proper against such interference as would give a creditor the right to claim its sale or its use, would suffice for its licit consecration."[2] The notion, however, that any kind of debt on the building is an obstacle to its consecration is widespread in this country, and it may be regarded, if desired, as a local custom or law. Quite likely, also, this understanding of the rule may encourage parishioners to pay off the debt more quickly, and should not be disturbed. In any case, there is no strict obligation to have a parish church consecrated, even if it is entirely free of debt, but only in so far as it is possible, which leaves it open to the Ordinary to use his own discretion.

### 681.—Consecration with no Altar

*A church to be consecrated has only one altar, and this is already consecrated. It is suggested that this should be execrated and reconsecrated: in such a case, may the shortform be used?*

1 Berutti, *De Rebas,* §8, II.
* *Ecclesiastical Review,* 1908, XXXIX, p. 442.

Canon 1165, §5: Altare consecrari potest etiam sine ecclesiae consecratione; sed una simul cum ecclesia debet saltem altare maius consecrari aut altare secundarium, si maius sit iam consecratum.

Canon 1200, §1: Altare immobile amittit consecrationem, si tabula scu mensa a stipite, etiam per temporis momentum, separetur; quo in casu Ordinarius potest permittere ut presbyter altaris consecrationem rursus perficiat ritu formulaque breviore.

§2. Tum altare immobile tum petra sacra ammitunt consecrationem ... si amoveantur reliquiae. . . .

*S.R.C.,* 8 June, 1896, n. 3907.1; *Fontes,* n. 6262: An Ecclesia, in cuius consecratione omissa fuerit consecratio Altaris, habenda sit valide consecrata? *Resp.* Affirmative, nempe valide; sed non licite, nisi habeatur Apostolica dispensatio, quamvis aliqua vel omnia Altaria iam consecrata reperiantur; ideoque servandus omnino est ordo Rituum Pontificalis Romani, ut integritas consecrationis perficiatur.

(i) The method suggested for solving this problem is taught by Fcrreres, *Institutiones,* II, §56, and by Coronata, *Institutiones,* II, §779; the simplest way of causing the altar's execration is by removing the relics. If this method is followed, we are of the opinion that the short form is not permissible, though we can find no commentator who discusses the point. The short form in the Roman Ritual is twofold: the first corresponding to the circumstances of canon 1200, §1, the second to those of §2; in the latter case, at least, the Ordinary needs a faculty for delegating a priest to consecrate, and this power is usually included in his quinquennial faculties. But, in each case, the Ritual is providing for the consecration of an altar apart from the consecration of the church, and does not contemplate the circumstances of the above question, in which the altar's consecration is part of the very solemn and unusual rite of consecrating a church. This rite must be strictly according to the Pontifical, as directed in T.R.C., n. 3907; the consecration of the altar is interrupted at one point for the purification of the church, for which no provision is made in the short form.

(ii) The best way out of the difficulty is to erect a new altar for the consecration of the church, but, if this is not possible, we cannot agree with the method suggested in (i). All law is an ordinance of reason, and it seems an unreasonable procedure deliberately to execrate an altar solely in order to consecrate it again. A dispensation should be sought, if time permits, as indicated in n. 3907. If time docs not permit, we agree with Vermecrsch, *Epitome,* II, §507, that *epikeia* should be used, and the church consecrated without the consecration of an altar.

### 682.—Reconciliation of Bombed Church

*What rites, if any, are to be carried out before saying Mass in a church partly destroyed by enemy action, during which some persons in the church were killed?*

Canon 1172, §1: Ecclesia violatur infra recensitis tantum actibus, dummodo certi sint, notorii, et in ipsa ecclesia positi: (1) Delicto homicidii; (2) Iniuriosa et gravi sanguinis effusione. . . .

Canon 1174, §2: Si dubitetur num ecclesia sit violata, reconciliari potest ad cautelam.

Canon 1177: Reconciliatio ecclesiae benedictae fieri potest aqua lustrali communi; reconciliatio vero ecclesiae consecratae fiat aqua ad hoc benedicta secundum leges liturgicas; quam tamen non solum Episcopi, sed etiam presbyteri qui ecclesiam reconciliant, benedicere possunt.

(i) The violation of a church, or what the older authors called its pollution, is not to be confused with execration, i.c. the loss of its consecration or blessing, which canon 1170 declares does not occur "nisi tota destructa fuerit, vel maior parietum pars corruerit, vel in usus profanos ab Ordinario loci redacta sit, ad normam can. 1187". Partial destruction neither execrates nor violates the building, and a decision on the above case will therefore depend on whether the death therein of persons by enemy action is to be reckoned as homicide or, at least, the injurious and copious shedding of blood.

(ii) Since violation, from canon 1174, deprives the church of its normal rights as a place of worship, it is not held to have happened unless the cause is certain and notorious; the crimes mentioned in canon 1172 must come fully within their legal definition. Thus homicide must be a *delictum,* a morally imputable violation of law to which is attached a penal sanction (canon 2195, §1); similarly the shedding of blood must be intended by the agent and be, at the same time, a certain violation of rights—*iniuriosa.* It could be maintained, with considerable probability, that the legal definition of these actions is not verified when they are done in the course of war by enemy action from the air: that the aviator did not intend to kill worshippers in a church nor shed their blood. It would then follow that the church has not been violated and no reconciliation of any kind would be required.

(iii) But it could also be maintained that the matter is, at least, doubtful, and though there is no strict obligation to reconcile a church which is not certainly violated, the persons responsible might like to do so "ad cautelam" as canon 1174, §2, permits: it would be a fitting ceremony at the re-opening of the church, an act of reparation for whatever sin has been committed, a rite acceptable both to the faithful and to the clergy. The liturgical rite of reconciliation distinguishes between a church which has been merely blessed and one which has been consecrated, and the modern law of the Code is less exacting than the previous legislation.

For a blessed church the rite of reconciliation is in *Rituale Romanum,* VIII, xxviii. It is fitting that the Ordinary should be informed but, since the Code, his delegation is no longer necessary, and the rubric of the typical edition (1925) accordingly omits this requirement.

If the church has been consecrated, delegation from the Ordinary is necessary from canon 1176, §2, and the formula to be used is found in *Pontificale Romanum,* as explained in the concluding rubric of *Rituale* R0-*manum,* VIII, xxviii, which also repeats the direction of canon 1176, §5, permitting the rector of the church to inform the Ordinary afterwards, if time did not permit an application for a faculty before the act of reconciliation.

## **683.**— Consecration Crosses

*What is the law concerning the material and disposition of the crosses required when a church is consecrated?*

*Pontificate Romanum* "De Ecclesiae Dedicatione": Item depingantur in parietibus Ecclesiae intrinsecus per circuitum duodecim cruces, circa decem palmos super terram, videlicet tres pro quolibet, ex quatuor parietibus. Et ad caput cuiuslibet crucis figatur unus clavus, cui affigatur una candela unius unciae.

*S.R.C.,* 18 February, 1696, n. 1939: An duodecim cruces . . . expleta consecratione possint evelli si sint factae ex marmore, aut deleri si sint pictae . . .? *Resp.* Omnino perpetuis in futuris temporibus remanere debere.

31 August, 1867, n. 3157.4: Cruces . . . non fuerunt dispositae prout fert Pontificale Romanum; et aliunde, incuria plane supina, quaedam fuerunt destructae effosso muro. Quaeritur: an novis Crucibus, loco et ordine requisitis ac depictis, suppleri debeat illarum unctionis caeremonia iuxta formam Pontificalis? *Resp.* Depingantur iterum Cruces in Ecclesia, quarum sex in parte dextera, sex aliae in sinistra appareant: ita tamen ut duae sint prope Altare maius et duae prope Ecclesiae ianuam, omissa unctionis caeremonia.

12 November, 1909, n. 4240: An Ecclesia, constructa vel construenda ex materia quae caementum armatum nuncupatur, consecrari valeat, adhibita forma ac ritu Pontificalis Romani? *Resp.* Affirmative, dummodo duodecim Crucium loca, et postes ianuae principalis, sint ex lapide.

(i) From the above directions it is clear that it suffices for the crosses to be painted on the walls of the church, except when these walls are of reinforced concrete, when the portions to be painted must be of stone, or of marble. The commentators permit crosses made of mosaic or of metal let into the wall, but reject the use of wooden crosses. Wooden crosses are not, indeed, expressly prohibited, but the prohibition is, we think, implied in n. 4240. When the church is built of brick, plastered or not, the crosses should similarly, in our opinion, be of stone or marble, but there arc no express directions on this point. A writer in *I'Ami du Clergé,* 1939, p. 284, accepts as a principle that the part to be anointed must be of natural stone, and therefore regards brick as being in the same category as concrete.

(ii) The arrangement of the crosses may be cither as directed in the Roman Pontifical or as in ^.R.C., n. 3157.4. The candle bracket, according to the direction of the Pontifical, should be above the cross "ad caput cuiuslibet crucis", but the custom of placing it below is very common and may be followed. The reason why the Pontifical directs it to be above is, no doubt, in order not to have any obstruction in the way of the prelate who is consecrating: some therefore insist on it being above for the ceremony of dedication, but permit it to be placed below when the candles are lighted on subsequent anniversaries. Since the direction is so clear, we can sec no reason why the bracket should not be above the cross, both for the dedication and thereafter.

## 684.—Parish Hall in Church Basement

*In many places a hall for parochial purposes exists beneath the church. Is this quite in order? Are there any limits to the purposes for which the hall may be used?*

Canon 1164, §2: In ecclesia nullus aperiatur aditus vel fenestra ad laicorum domus; locaque si adsint, subter ecclesiae pavimentum aut supra ecclesiam ad usum mere profanum ne adhibeantur.

J'.R.C., 4 May, 1882, n. 3546: (Orator) exposuit nonnulla quaesita quoad subterranea loca Ecclesiarum quae in eiusdem Archidioecesi brevi consecrandae sunt; ubi spectacula, theatri more, ad iuventutem praesertim honeste exercendam peragenda essent . . . *Resp.* Non licere, utpote quod Ecclesia cum sua parte subterranea consecratur per modum unius.

(i) The common law prohibits the basement of a church to be used for purely profane purposes, by which is dearly meant the *finis operis* not the *finis operantis'.* A variety show or a dance is "profane" even though the proceeds support some religious work; J.R.C., n. 3156.5, prohibits a church basement to be used as a wine cellar. The reason is that the basement forms part of the building and shares in its consecration.

Its use as a library or as a meeting room for parish confraternities and conferences on religious subjects is clearly not forbidden; nor *a fortiori,* it would seem, is its use as a Catholic school.1

(ii) There arc many examples of parish halls beneath churches in this country, and these halls are commonly used indiscriminately for all purposes of business or entertainment, like any separate parish hall.

This departure from the common law may be justified on various titles, and we must assume that some justification exists in every case, since the practice is sanctioned by the local Ordinary. There may be, firstly, a custom which the Ordinary cannot easily abolish, according to the terms of canon 5: to deprive a parish of the only hall it possesses would certainly be a difficult thing to do. Secondly, an induit may have been obtained when the building was erected. The *Regulae* issued 29 June, 1908, reprinted in *Fontes,* n. 6459, indicate that the *Congregation of the Council* is competent to dispense the first part of the law in canon 1164, §2, and the same may be said, it seems, for the latter part. It should also be observed that the *non licere* of J.R.C., n. 3546, refers actually to the lawfulness of consecrating a church the basement of which is being used for a profane purpose; therefore, many of the commentators are prepared to permit certain border-line practices, or to interpret the law as widely as possible in necessitous cases, whenever it is a question of a non-consccrated church?

### 685.— Titular: Parish Church and Chapel

*A chapel of ease has a titular distinct front that of the parish church. Has the feast of the titular of the parish church to be celebrated in the chapel of ease as a double of the first class with octave?*

*S.R.C.,* 24 August, 1704, n. 2144.5: An Titularis matricis Ecclesiae, quae est matrix totius populi Civitatis, habeat aliquam specialitatem aliarum Ecclesiarum titularium, ita ut possit recitari Officium et Missa a toto Clero Sacculari Civitatis, vel an tantum ab illis qui sunt de gremio eiusdem Ecclesiae matricis? *Resp.* Ab illis tantum qui sunt de gremio.

1 Clacys-Bouuaert, *Manuale luris Canonici,* III, n. 8; Bcstc, *Introductio in Codicem,* p. 558.
* *EpbcmcridfS Uturgicae,* 1930, p. 303; Coronata, *Institutiones,* II. §733.

29 May, 185τ, n. 2986.3: An Officium Dedicationis vel Titularis alicuius Ecclesiae parochialis recitandum etiam sit in Ecclesiis vel Oratoriis subiectis? Rzr/>. luxta alias decreta, a Clero Ecclesiae tantum.

ir August, 1877, n. 3431, I, 3: Ex Coadiutoribus nonnulli ab Ordinario adseribuntur servitio Parochorum, qw praeter Ecclesiam paroecialem aliam filialem habeant. . . . Tenentur Coaciiutores ad Officium Titularis illius Ecclesiae paroccialis; vel tenetur parochus tantum, vel ambo? *Resp.* Negative ad primam partem; ad alteram, teneri parochum tantum.

The reason why the titular of the parish church is nor to be celebrated elsewhere is that this feast, unlike that of a local patron, is exclusively for the church whose titular is being honoured, and, as regards office, exclusively for the clergy attached to the church. The celebration is purely local: "nullum influxum habet in alias ecclesias vel oratoria subiecta";1 "hoc festum, ut patet, agendum praescribitur ratione ipsius ecclesiae materialis, adeoque celebrandum est et in ipsa ecclesia et ab iis qui sunt servitio eiusdem ecclesiae adscript! . . ,";2 "celebrandum est ab iis omnibus c Clero, quibus eadem ecclesia propria est aut ratione beneficii, aut ratione servitii."3 The titular of the Cathedral church is the only exception to this rule, an exception justified by its special relationship to the churches and the clergy of the whole diocese.

### 686.—Institution Hall

*is the law relating to the celebration of Mass in a large room in an institution used by all religions bodies at stated times?*

The principle of canon 825, §i, is of a quite general character: "Non licet Missam celebrare in templo hereticorum vel schismaticorum, etsi olim rite consecrato aut benedicto." But it does not really touch the fairly common arrangement mentioned in the question. Granted that the place used is, on other counts, lawful for the celebration of Mass, the only objection to using it promiscuously with heretics is the danger of scandal to the faithful. An instruction of the Holy Office, 5 June, 1889, seems to meet the situation described. We are told that every effort should be made to obtain the use of a building exclusively for Catholic worship, but, if this cannot be done, the use of a building alternately with heretics may be tolerated provided scandal is removed. The difficulty solved by the Holy Office was concerned with the use of a military chapel, containing two altars, the one heretical the other Catholic. During the heretical rite, the Catholic altar was hidden by a curtain, and *vice versa.* "Attentis expositis, usum, de quo quaeritur, tolerari posse, dummodo scandalum absit, et nulla alia habeatur ecclesia in qua catholici milites religionis officiis satisfacere valeant; ct ad mentem. Mens est ut Vicarius Ap. sollicite curet ut a gubernio brittanico erectionem capellae obtineat, quae soli catholicorum usui sit destinata; et si quidem gubernium recuset, studeat cappellam huiusmodi, quo citius fieri potest, aedificari, congregatis undecumque eleemosynis."4

1 *Epbemtridts Utttrgicae,* 1924, p. 49.
1 Callcwacrt, *De Breviarii Romani UJurgia,* §376.
1 Acrtnys, *Compendium,* §202.
* *Fontes,* n. 1119.

## 687.—Private House

*Under what circumstances can permission be granted to say Mass in a private house? Can this form part of the celebrations for opening a new residence? Who can grant this faculty or privilege?*

Canon 822, §1: Missa celebranda est super altare consecratum et in ecclesia vel oratorio consecrato aut benedicto ad norman iuris, salvo praescripto can. 1196.

§4. Loci Ordinarius aut, si agatur de domo religionis exemptae, superior maior, licentiam celebrandi extra ecclesiam et oratorium super petram sacram et decenti loco, munquam autem in cubiculo, concedere potest justa tantum et rationabili causa, in aliquo extraordinario casu et per modum actus. (Canon 1196 is concerned with private oratories and is not relevant to the issue raised.)

The substance of our reply to this question is contained in §4 of the canon: it is entirely a matter for the discretion of the Ordinary, who may grant the request for Mass in a private house or refuse it, while observing the restrictions imposed upon him by law.

(i) He may grant permission only *per modum actus,* a phrase used in papal documents as far back as 1856 and now incorporated in the Code. Some authors interpret this to mean that permission could not be given permanently and indefinitely, but that it could be given as often and as long as the urgent cause continued: "concedere facultatem per modum actus est illam concedere, non per modum habitus, seu in perpetuum, aut indefinite (ut ante Tridentinum faciebant Episcopi) sed vi causae transeuntis, et quamdiu durat haec causa. Unde extante causa urgenti de qua supra, episcopus concedere poterit facultatem celebrandi, non tantum una vel altera vice, ut quidam volunt, sed tempore quo durabit causa; quod alioquin tempus erit necessario breve, quia quod est urgens non duret".1

Gasparri, on the other hand, gives the weight of his great authority to a stricter interpretation: "Huic igitur doctrinae adhaerere debemus; quae hoc jus in episcopis non admittit, nisi ex magna et urgenti causa, et quidem pro una aliavc vice, non autem pro toto tempore quo causa magna et urgens perduraverit."2 A decision of the *Code Commission,* 16 October, 1919, directed that §4 of canon 822 was to be interpreted strictly, "restrictive", and some writers conclude from this that Gasparri's interpretation must now be given to the words "per modum actus".3 Coronata retains the liberal view with which we agree.4

(ii) The reasonable cause is further explained by the words "in aliquo extraordinario casu". We fear that the opening of a new private residence cannot usually be considered "an extraordinary case"—it is a matter for the Ordinary's judgement. The Holy See has given an indication of what is a suitable case for the exercise of the Ordinary's judgement in a reply sanctioning Mass in a "camera ardente" where special reasons exist: "Utrum Ordinarius vi canonis 822, §4, permittere possit Missae celebrationem

1 Many, *De Docis Sacris,* §82.
2 *De Eucharistia,* I, §225.
3 *Irish Ecclesiastical Record,* 1925, XXV, p. 426.
4 *Institutiones,* II, §770. Cf. J. C. Buckley, *The Celebration of Mass in Extraordinary Places* (1947). P. 59.

domi praesente cadavere in loco vulgo *camera ardente? Resp.* Negative, nisi agatur de casu aliquo extraordinario, extante iusta et rationabili causa, etc. . . . Casum extraordinarium haberi, unaque simul justam et rationabilem causam, occasione obitus episcopi residcntialis, seu loci Ordinarii, aut personae e principe familia, aut aliter insignis ob merita et benefacta in Ecclesiam vel in rempublicam vel ob munificentissimas clargitiones in pauperes et egenos . . . dummodo semper debitae exequiac expleantur in ecclesia."[1] The answer permits as many as three Masses to be said on such an occasion. The authors suggest other instances of "extraordinary" occasions, for example the case of a priest who is forced to live in some place where there is no oratory. The sickness of the priest's parents is rightly rejected as an insufficient cause, but wc have often heard of a priest obtaining permission to say Mass in the house where his parent is dying.

(iii) "nunquam in cubiculo". Permission may never be given, under the canon, for Mass to be said in a bedroom, and the prohibition has often been repeated. The most that may be allowed is to celebrate Mass in a neighbouring room. "Nunquam potest missa celebrari in cubiculo scu in cella dormitoria. Oportet sit in alio loco decenti et ab usu domestico alieno. Posset tamen fieri in loco (v.g. in cubiculo) ad cellam dormitoriam aegroti contiguo, ita ut missae sacrificio assistere valeat aegrotus."[2]

Added to the reply of 3 May, 1926, is an official annotation by the secretary deprecating the custom of having baptisms, marriages, etc., in private houses instead of in churches: "Est conatus quidem ad laicizandas —sit venia verbo—caeremonias ecclesiasticas. . . . Codex huic infirmitati plurimum resistere conatus est (cf. canons 773, 1109, §1.2), sperandum est, cum fructu. Hinc casus isti non sunt multiplicandi, sed pro viribus restringendi."

In this statement, we have had in mind the common law of the Church and not those places, such as Ireland, where the practice of using private houses for Mass is justified by immemorial custom and governed by local statutes; for papal induits cf. *The Clergy Review,* 1948, XXX, p. 280.

### **688.—** Secular Functions in Churches

*In a parish which has no other place for public meetings, is it permissible to use the church for this purpose? I have in mind the inauguration of Catholic Action at an assembly of the faithful in which, following a discussion, the officers are to be elected.*

Following the canons dealing with execration and violation of churches is the direction of canon 1178: "Curent omnes ad quos pertinet, ut in ecclesiis illa munditia servetur, quae domum Dei decet; ab iisdem arceantur negotiationes et nundinae, quanquam ad finem pium habitae; et generatim quidquid a sanctitate loci absonum sit."

The very general terms of this canon leave it to those whose business it is, and particularly to the Ordinary, to give a decision in cases which appear to be on the border line. Occasionally, local law may supplement or define the directions of the Code. Thus, the Plenary Council of Piedmont

[1] *S.C. Sacram.,* 5 May, 1926.
[2] Brys in *Collât. Brugc/t.,* 1932, p. 482.

(1927), n. 131: "Cum ccclcsiac in omnium fidelium usum ad divinum cultum publice exercendum sint destinatae, prohibentur in eis comitia profana, scenici ludi vel personati vel mechanici, etiam ad res religiosas pertinentes." Considering the common law of the Code, as interpreted by canonists, and without prejudice to any local law which may exist, wc think that a meeting of Catholic Action is permissible in a church, if there is no other suitable place available.

It is clear from the words of the canon, "quanquam ad finem pium habitae", that the point to be examined, in deciding what is permitted, is not the purpose *{finis operantis)* of the assembled people, but the objective nature of the business transacted *{finis operis).* "Sacculares actiones opponuntur actionibus piis; actiones autem piae sunt quarum finis (finis nempe operis, non enim attenditur finis operantis) refertur vel ad fidem, ut disputationes aut praelectiones de scientia sacra, vel ad religionem, ut spectacula pia, vel ad charitatem aut misericordiam spiritualem vel corporalem, ut multi pii coetus. Unde hac actiones piae permittuntur in eclcsiis."[1] It may be doubted whether religious spectacles, such as mystery plays, arc now lawful. A decree of the *Consistorial Congregation,* to December, 1912, definitely prohibited religious cinematograph films, and its wording affords useful guidance in determining what is permitted by the common law; "Quod, etsi pio iuvandae religiosae fidelium institutionis desiderio peractum fuerit, visum tamen est periculis atque incommodis facile locum dare . . . aedes Deo dicatas, in quibus divina celebrantur mysteria et fideles ad caelestia et supernaturalia erigantur, ad alios usus et praesertim ad scenicas actiones etsi honestas piasve agendas converti non debere."[2]

Catholic Aetion being the participation of the laity in the apostolate of the hierarchy is clearly of its nature a religious assembly. If the hierarchy can debate their problems during a synod held in a church, it would seem that the laity, in so far as they participate in the work of the hierarchy, may also do so. The religious cinematograph is forbidden because likely to lead to abuse, and if the meetings of the lay apostolate of Catholic Action are abused, for example, by unseemly disputes, they would also have to be forbidden in churches. For the moment, unless there is some local law to the contrary, they are not forbidden. The Blessed Sacrament should be removed to a tabernacle secluded from the meeting.

## §5. STATUES

### **689.—** Statues in Churches

*To what extent is a parish priest bound io obtain the Ordinary's authority before introducing or removing a statue from the parish church?*

(i) In the common law the removal of a statue or any other thing of value from a church is governed by the rules of alienation, as in canons 1530-1534, and it may not be done without the permission of a Lawful superior.

In addition to a monetary calculation of value, the law of canon 1281

[1] Many, *De Locis Sacris* (1904), p. 89.
[1] *Fontes,* n. ao8 5.

requires permission of the Holy Sec for the alienation of any statue which is die object of great popular veneration.

Local law frequendy determines the matter more closely. Thus in *I Wesm.,* xxv, 4, we read: "Aedificia omnia sacra, scholas, presbyterium, necnon alia omnia ad ecclesiam perdnenda, sacra tecta custodire curet. Nihil innovet, vel addendo, vel alienando, vel etiam notabiliter immutando, inconsulto episcopo." This law is substantially repeated in some diocesan regulations as *Lancaster Synod,* 1945, n. 108. Cf. Q. 652.

(ii) The lawfulness of introducing new statues is not so clearly explained in the common law of the Code. Canon 1279 is almost entirely concerned with forbidding anyone to place in churches statues which are unbecoming, startling, or likely to encourage errors in the minds of the uneducated; some of the modern "arty" productions are undoubtedly of this nature, as the Fathers of the *Vth Malines Council,* 1957, n. 156, recently observed in banning certain figures of Christ and of the Saints: "potius latrones quam Sanctos repraesentant aut figuram Christi Domini patientis non maiestate refulgentem sed horridam referant". In declaring, however, that Ordinaries may not approve statues unless they are in accordance with ecclesiastical custom—quae cum probato Ecclesiae usu congruant—canon 1279, §2, seems to imply that the approval of the Ordinary is required for the introduction of any statue whatever. But nearly everywhere local law makes it quite certain, as in the words of the ***I** Westm.* quoted above: "nihil innovet". Similarly the common law of canon 1536, §2, forbids the rector of a church to refuse a gift without the Ordinary's permission, but says nothing about accepting one, it being taken apparently for granted that he will normally want to accept gifts for the church. But though gifts of money are always desirable, gifts in kind are sometimes not, and local laws often require a rector to obtain the previous consent of some diocesan authority, as in *Liverpool Synod,* 1945, n. 171, before accepting the gift of a statue. It is a very wise precaution, since things of this kind are not easily removed without causing pain once they have been introduced.

(iii) The common law, as well as the local law, is obviously to be interpreted on the axiom *de minimis non curet lex-,* small changes and alienations in things of no importance arc not considered to come within the law, but a statue in a church would usually be reckoned a notable thing. Though the law, as given above, is fairly clear, particularly with regard to alienation, there is always room for difference of opinion on questions of fact: the value of an article, the existence of a popular devotion, or whether a change is notable. It is then for the superior, to whose notice some alleged violation of the law has been brought, to give a decision.

### **690.**—Our Lady and St Joseph

***If** tbe Divine Child is represented in these statues, is there any law as to tbe position Onr Lord should have? **I** have heard it maintained that it is wrong to represent the Divine Infant in tbe arms of St Joseph.*

Canon 1279, §1: Nemini liceat in ecclesiis, etiam exemptis, aliisvc locis sacris ullam insolitam ponere vel ponendam curare imaginem, nisi ab Ordinario loci sit approbata.

§2. Ordinarius autem sacras imagines publice ad fidelium venerationem exponendas ne approbet, quae cum probato Ecclesiae usu non congruant.

§5. Nunquam sinat Ordinarius in ecclesiis aliisve locis sacris exhiberi falsi dogmatis imagines vel quae debitam decentiam et honestatem non praeseferant, aut rudibus periculosi erroris occasionem praebeant.

(i) Λ distinction must be made between "insolita", in §1 of this canon, and "quae cum probato Ecclesiae usu non congruant" in §2; otherwise, if they mean exactly the same thing, the second section denies to the Ordinary the powers granted to him in the first section, which is unreasonable. It must be held with Vermcersch-Creusen, *Epitome,* II, §605, that a statue, though of a new design or symbolism, and therefore unusual, may nevertheless be in harmony with ecclesiastical usage. If a statue is unusual in form or symbolism, the Ordinary's permission is required for its public erection and veneration, and the permission will not be given unless the novelty conforms in other respects with ecclesiastical usage. Thus the statue of Our Lady of Lourdes has certain features which, though unusual at one time, arc not in conflict with any ecclesiastical usage. If the novelty offered for the Ordinary's approbation suggests false doctrine, or may be the occasion of error to the uninstructed, there is scarcely any problem to discuss. Whether it offends or not against propriety (decentia, honestas) is largely a matter of opinion, and an artist's outlook may be startlingly different from that of the ordinary person: the decision is for the Ordinary, if the statue is to be placed in a church or sacred place, and the aggrieved parties may have recourse to the Holy See.

(ii) In accordance with the above principles, certain representations have been forbidden by the Holy See, though one is free to argue for what precise reason. Thus, T.R.C., 23 February, 1894, n. 3818, decided "non expedit" in the case of a statue of Our Lady of Sorrows vested in black with a crucifix in the left hand. The prohibition of the Holy Office, 8 April, 1916, *Fontes,* n. 1500, "imaginem B.M. Virginis vestibus sacerdotalibus indutae esse reprobandam", seems to be based on doctrinal reasons. A statue of St Joseph portraying his heart would certainly be forbidden, since J.R.G, 14 June, 1873, n· 53°4> following earlier directions of the Holy See, decided that devotion to the heart of St Joseph was not approved.

(iff) When devotion to St Joseph began to spread, the usual form of statue represented him holding a branch of olive or a lily, and occasionally leading the Infant Jesus by the hand. By the nineteenth century artists began to represent Our Lord in his arms, and we can find no official prohibition or discouragement of any kind against this form of statue, whether in pontifical or local decrees, though the innovation was strongly criticized in many quarters.1 Some writers mention a letter from the Holy Office, 28 February, 1875, addressed to the Bishop of Przemysl, directing that representations of Our Lady with the Divine Infant should show Him in her arms. We have not found this in any official collection. Students of iconography have argued that this is the correct position in the case of Our Lady, but not in the case of St Joseph, since the Blessed Virgin is the real mother of Christ whereas St Joseph is not His real father. We think that if there were any remote danger of the uninstructcd faithful being led to

*dit Clergé,* 1928, p. 734.

believe dut a statue of St Joseph with Our Lord in his arms implied that he was the real father, this form of statue would have been forbidden long ago. It has not been forbidden, to the best of our knowledge, and though the more traditional style is to represent St Joseph either alone, or with the Divine Child at his feet, the statue of the Saint with Our Lord in his arms is now so common that it can no longer be regarded as "insolita" in the terms of canon 1279, §1.

*If is alleged that a recent Rowan decision forbids statues of Our Lady and Child representing Our Lady as crowned or sealed unless Our Lord is similarly represented. Is this so?*

Canon 1279, §1 : Nemini liceat in ecclesiis, etiam exemptis, aliisve locis sacris ullam insolitam ponere vel ponendam curare imaginem, nisi ab Ordinario loci sit approbata.

We can find no trace of any Roman instruction of the kind described, and we suppose that it is nothing more than the opinion of some private teacher. It is certain that statues of the type alleged to be forbidden are very common, and we can sec no reason against them. Both at St Edmund's and at Ampleforth Our Lady (holding the Divine Infant) is alone crowned; several examples of this and of Our Lady alone seated may be seen in Dom Roulin's *Nos Eglises,* and one well-known figure, produced by Burns Oates & Washbournc, is described in this book (Fig. 754) as "Rien d'insolite, ni de vulgaire, ni de bizarre".

### 691.—Our Lady of Czestochowa

*Couldyou give an explanation of the papal protest, concerning an insult to Our Lady in Poland, which isfound at the conclusion ofa pre-war encyclical on the rosary?*

The encyclical is *Ingravescentibus Malis,* 29 September, 1937, of which a translation appeared in the *Tablet* of 9 October, p. 478: "Since a blasphemous insult has lately been published in the public Press against the Most Blessed Virgin, We cannot refrain from taking this opportunity, together with the bishops and people of that country which honours the 'Queen of the Kingdom of Poland', to give that great Queen, as Our Office requires, due reparation, and indignantly to denounce this act, which has been committed with impunity among a civilized people, as a sacrilege to the whole Catholic world."

The protest concerned an article which appeared towards the end of August in *Der Arbeitsmann,* a German weekly organ, attacking the popular devotion to the famous shrine of *Our Lady of Czestochowa.* We have not seen the original article, but give a translation of the French version from *I'Ami du Clergé,* 11 November, 1937: "Examine this statue of the Virgin with the Infant Jesus, study the lines of these black figures and their strange, curious and exotic appearance. You would be prepared to swear that the image belonged to some missionary station in Africa, frequented by negroes and converted Asiatics. For the artist, we suppose, has attempted to produce a cross between a mongol and negroid type. It is ridiculous to expect Aryans to kneel before such a picture and address their petitions to this . . . (an ignominious and blasphemous expression)."

*Documentation Catholique,* 20 October, 1937, quoting from *Le Figaro* of 5 September, 1937, gives further details of the indignation which this article occasioned in Poland. The Polish foreign office made representations at Berlin and the editor of the paper was officially reprimanded. In Poland, the matter did not end there. A great pilgrimage of various Catholic societies took place at Czestochowa, accompanied by energetic protests against the atheistic propaganda of the Nazis.

It will be remembered that, at the time the Pope was nuncio in Poland, he strengthened the nation's resistance by remaining in Warsaw when the Russian Red troops were a few miles from the city. There was a great novena of intercession and they were defeated by Pilsudski on 15 August, 1920.1 Apart from any other consideration, the Holy Father's intimate knowledge and love of Poland would sufficiently account for his strong condemnation of this blasphemy. According to the *Catholic Encyclopedia,* XII, 90 c, 194 d, and XIII, 261 a, the painting at this shrine is a very ancient one, attributed like some others to St Luke. The shrine, it is said, attracts as many as a million pilgrims on the feast of the Assumption.

### **692.**— Similar Statues in Churches

*V7e have in this church three statues of Our Lady, one of Lourdes, one of Fatima, and one of unidentified title. Is this permitted? Does the rule about statues apply also to pictures?*

*S.R.C.,* 20 May, 1890, n. 3732: Firma ecclesiastica Liturgiae regula est, ab hac Sacra Rituum Congregatione continenter inculcata, in una cademquc Ecclesia, eoque magis in uno eodemque Altari, duas pluresve tabulas aut statuas unum cumdemque Coclitem referentes, vel si agatur de SSma Virgine Deiparam referentes sub uno eodemque titulo invocatam, publicae venerationi exponi non posse. . . . Nequit igitur in Ecclesiis publicisque quibuslibet sacris Aedibus illa exponi ubi alia eiusdem nominis imago venerationem a fidelibus populis cultumque obtinet.

The three statues of Our Lady described above are permitted; in fact, there is no limit to the number of such statues, provided the title of each is different, though considerations other than liturgical rules would discourage an unreasonable number. The direction is liberally interpreted in n. 3791, which permits a statue of the Immaculate Conception and another one of Lourdes accompanied by the circumstances of the apparition. On the other hand, both in n. 3732 and previously in n. 3723, Our Lady of the Rosary and Our Lady of Pompeii are held to be the same and forbidden together in the same church.

Pictures are included in the rule (tabulas aut statuas), but one should examine whether *cultus* or public veneration of the faithful is being given to the statues or images in question. A second and identical representation in a stained-glass window, for example, is not forbidden, since it would not normally be the object of any special veneration.

1 Cf. Lord Clonmorc, *Pope Pius XI,* p. 65 *seq.*

### 693.—Statue of a "Beatus"

*Is it permitted to erect in a church for the veneration of the faithful a statue of a beatified saint who is not yet canonized? If so, is there any difference to be observed between the "cultus" of such and one who is canonized?*

Canon 1277, §1: Cultu publico eos tantum Dei Servos venerari licet, qui auctoritate Ecclesiae inter Sanctos vel Beatos relati sint.

§2. In album Sanctorum canonice relatis cultus duliae debetur; Sancti coli possunt ubique et quovis actu eius generis cultus; Beati vero non possunt, nisi loco et modo quo Romanus Pontifex concesserit.

There is no difference in kind between the *cultus* exhibited towards a beatified and a canonized saint; the difference is one of degree, it being restricted, in the case of the beatified, to certain acts and certain places. This is, in fact, the difference between beatification and canonization: by canonization the *cultus* of a saint is enjoined on the whole Church. In the case, for example, of St Teresa of Lisieux, the brief of her beatification conceded an office and Mass to the diocese of Baycux et Lisieux and to the oratories of discalccd Carmelites, a concession which carried with it the right to expose statues and relics for veneration, but only in the places mentioned. As to what is permitted in the *cultus* of a beatified saint, one must consult the particular induit which authorizes it. The Holy See may grant to a "beatus" in a particular place all the privileges which are usually given to a canonized saint, e.g. the dedication of an altar, and the placing of a statue above it.

### 694.—Statue on the Tabernacle

*In a small oratory, in which the Blessed Sacrament is reserved, a statue of Our Lady stands permanently on the top of the tabernacle. May this be permitted, at least on the grounds of immemorial custom?*

J.R.C., 3 April, 1821, n. 2613.6: An toleranda vel eliminanda sit consuetudo, quae in dies invalescit, superimponendi Sanctorum reliquias pictasquc Imagines Tabernaculo, in quo Augustissimum Sacramentum asservatur, ita ut idem Tabernaculum pro basi inserviat? *Resp.* Assertam consuetudinem tamquam abusum eliminandum omnino esse. Cf. n. 2906 which forbids a statue before the door of the tabernacle even temporarily; also n. 3673 forbidding the practice of placing a statue "in medio altaris maioris loco tabernaculi vel ... in huius posteriori parte". Bouscaren, *Digest,* II, p. 377, prints a reply from *S.C. Consist.,* 8 October, 1932 (private), directing the above decrees to be observed in an instance where an Ordinary states that there is a statue of the Sacred Heart on the tabernacle which it is difficult to have removed.

The instructions are so explicit on this point that it is scarcely worth while considering the possibility of an induit being obtained permitting, in special circumstances, a statue to be placed on the top of the tabernacle. The statue must be removed, or erected on a wall bracket well above the tabernacle, provided it corresponds with the titular of the altar.

The only articles permitted, or, if you like, tolerated, upon the top of the tabernacle are the altar crucifix[1] and the exposition throne during the time of exposition.[2]

Reverence for the Blessed Sacrament is the reason for the rule, and the two exceptions are not illogical, since in the one case it is the Blessed Sacrament in question, and in the other it is the crucifix, which the altar must have and which cannot easily be placed elsewhere than on the tabernacle.

## §6. SACRED VESSELS

### 695.—Construction of Chalice

*Is it lawful to use a chalice made of German silver, the cap of which has been sprayed with silver and then fire-gilt?*

*Rit. Celebr. Miss.,* I, 1: debet esse vel aureus vel argenteus, aut saltem habere cuppam argenteam intus inauratam et simul cum patena. . . .

*De Defectibus,* X, 1: si non adsit calix cum patena conveniens, cuius cuppa debet esse aurea vel argentea vel stannea, non aerea vel vitrea. . . .

Canon 1296, §3: Circa materiam et formam sacrae supellectilis, serventur praescripta liturgica, ecclesiastica traditio et, meliore quo fieri potest modo, etiam artis sacrae leges.

(i) Our purpose in answering this question is not to define what is fitting or becoming in the material of a chalice: for this there is only one rule—*quantum potes tantum aude.* We have to define what is the irreducible minimum, failing which the material of a chalice is gravely unlawful.

The stem and base may be of any metal but the cup itself must be of silver with the interior gilt. This is the clear rule of the rubric which has been explicitly enforced by J'.R.C., n. 3136.4. The direction of *De Defectibus,* X, i, nevertheless, permits the material to be of tin, a rule which is taken from *Decretum Gratiani,* C. XLV, dist. 1, De Consecratione: "Ut calix Domini cum patena, si non ex auro, omnino ex argento fiat. Si quis pauper est, saltem vel stanneum calicem habeat." The concession of a tin chalice in favour of a poor priest must still be accepted as the common law, but the authors we have consulted all interpret the words in *De Defectibus* as being restricted to cases of real poverty, and they also commonly require even the tin chalice to be gilt within, as directed by the previous rubric. Cf. *Collât. Bragen.,* 1924, p. 421.

(ii) Local law frequently insists on the material being at least silver. Thus in *I Westm.,* xviii, 1: "Calix ct pyxis, si fieri potest, cuppam saltem habeant argenteam, intus inauratam." In our view, it is nowadays not morally impossible for any priest to secure a chalice the cup of which is wholly of silver; whatever may have been the case when the Westminster decree was first framed, the clause "si fieri potest" is always and everywhere verified at the present time; therefore, a chalice cup made of a baser metal than real silver is unlawful. Occasionally, more modern diocesan legislation, as in *Middlesbrough Statutes* (1933), n. 221, makes the point quite dear

[1] N. 4136.2; Q. 669.
[1] N. 4268.4; Q. 667.

by stating that all chalices sent for consecration must be accompanied by a statement that the cup is of silver.

(iii) Induits have often been granted, particularly for foreign missions, permitting the material of the chalice cup to be made "ex acre albo", "cuivre blanc", "Bronze d'aluminium". No doubt what we call "German silver" is the equivalent of one or other of these metal alloys. If it is desired to use the chalice above described for Mass, an induit would have to be obtained from the Holy See. The local Ordinary could indeed dispense from the Westminster law, or declare that the exceptive clause "si fieri potest" is verified in the case; but the only alternative material in the common law is tin, not German silver or any other metal alloy.

*Are there any explicit directions as to the correct height of the chalice? Some of the older Rowan or Renaissance chalices are unusually high, those of Modem design extremely low.*

For practical purposes, a chalice should not be lower than six inches nor higher than ten. Actually the exact height has never been officially determined, but these measurements approximately represent the judgement of approved liturgists, e.g. Dr Long in *Irish Ecclesiastical Record,* December 1938, p. 660 (six to twelve inches); Croegaert, *De Rebus Cultus Materialibus,* 1937, §456 (17 to 22 centimetres); Roulin, *Nos Eglises,* 1938, p. 664 (16 to 23 centimetres).

Some of these writers, if not all of them, have been guided by the directions of St Charles Borromeo, whose extensive regulations for the church furniture of his diocese have always been regarded, in large measure, as enjoying a semi-official character. He gives two measurements: for a large and precious chalice "ab imo autem usque ad summum altitudine sit unciarum quatuordecim" (nearly ten inches); for a smaller chalice "altitudine duodecim" (about eight inches). Cf *Acta Ecclesiae Mediolanensis,* 1754, I, P· 539·

### **696.—** Desecration of Chalice

*An executor of a deceased priest finds it necessary to sell the priest's chalice. Is this permitted and, if so, will tbe chalice need to be consecrated again after tbe sale?*

(i) It is permitted, without any suspicion of simony, to sell a consecrated chalice for its intrinsic value as a precious or artistic object. There would be simony if a price above this intrinsic value is obtained precisely because of the quality of consecration. The example of a chalice, in this connection, is expressly mentioned in canon 730: "Non habetur simonia . . . cum datur res temporalis pro re temporali, quae tanquam subicctum habeat adnexum aliquid spirituale, ex.gr. calix consecratus, dummodo pretium non augeatur propter adnexam rem spiritualem." Since it is a sacred object the vendor is not permitted to sell it to such persons as would put it to a profane use.

(ii) From canon 1305, §1, a consecrated object, such as a chalice, loses

its consecration by being broken or changed in such wise that it cannot be applied to its proper use; by being used for a purpose unbecoming its character, for example, as an ordinary drinking vessel; lastly, by being put up for sale publicly. The qualification of publicity in the sale of a consecrated object is clearly necessary to cause the loss of its consecration. Canon 924, §2, dealing with indulgenced objects, declares that the indulgence is lost when the article is sold—without any qualification of publicity; but, in our view, this rule cannot be applied analogously to the qualities of other sacred objects. The executor will, therefore, act in a perfectly legitimate manner if he sells the chalice privately to some other priest; it remains a consecrated chalice.

*Is it necessary to reconsecrate a chalice after it has been repaired? The case I have in wind is that of a chalice the stern of which has been broken so that the base is severedfrom the cup.*

Canon 1305, §1, n. 1: Sacra supellex benedicta aut consecrata benedictionem aut consecrationem amittit: si tales laesiones vel mutationes subierit ut pristinam amiserit formam, et iam ad suos usos non habeatur idonea.

This rule is certainly applicable to the broken chalice under discussion, and all the writers we have consulted agree that it requires reconsecration. The original form of the article has been lost by the breakage, and it is no longer capable of being used as a chalice.

The rule, of course, does not apply to the type of portable chalice which permits the cup to be unscrewed from the base. In such articles it is considered that the cup alone has been consecrated.[1]*

## 697.—The Ciborium

*are the directions concerning the construction of a ciborium?*

Canon 1270: Particulae consecratae, eo numero qui infirmorum et aliorum fidelium communioni satis esse possit, perpetuo conserventur in pyxide ex solida decentique materia, caque munda et suo operculo bene clausa, cooperta albo vel serico ct quantum res feret, ornato.

*Rjfnale Romanum,* IV, i, 5: Curare porro debet, ut particulae consecratae, eo numero qui infirmorum et aliorum fidelium, etc. (as in the canon) . . . ornato in tabernaculo inamovibili in media parte altaris posito et clave obserato.

The texts use the word "pyx" instead of "ciborium", the latter word being in common use for the larger vessel containing many particles, and the former for a smaller vessel containing the Benediction host or a few particles for communicating the sick. The older custom of reserving the Blessed Sacrament within a folded corporal has been forbidden: "huiusmodi abusus est omnino eliminandus".[2]

(i) The material of which it is made must be "solid and becoming".

1 Cf. *Periodica, iqzo,* IX, p. jo; Priimmcr, *Tbeot. Moratis,* III, §299.
1 **ii** June, 1904; *Periodica,* I, p. 89.

Glass is forbidden.[1] Copper is not forbidden,[2] though the *Caeremoniale Episcoporum* mentions "vas argenteum vel aureum".[3] Silver is in common use nowadays; in many places, diocesan or provincial laws order the material to be at least of silver; the instructions given in *I Westm.* xviii, 1, require this if possible: "Nihil lacerum, nihil squalidum, nihil vilioris quam decet pretii, in re sacra facienda sacerdos admittat. Calix ct pyxis, si fieri potest, cuppam saltem habeant argenteam, intus inauratam." It is hard to imagine any church in England, in these days, so poor as to be unable to provide a silver ciborium. Whatever the material of which it is made the ciborium must be kept bright and clean within and without. In order to facilitate its purification, many recommend that it should have a slight elevation at the base of the interior of the cup.

(ii) The ciborium must have a well-fitted top or lid, "suo operculo bene clausa". Nothing is prescribed about the shape of the vessel and the lid, but the custom of some centuries favours the form of a chalice, i.e. a solid base, a stem supporting the cup having a knob in the middle. To facilitate the removal of the lid, and to accommodate the covering veil, the lid is usually surmounted by a small cross, crucifix or figure of Christ.

*Is there a common law that the interior of the ciborium must be gilt?*

*Caerem. Epp.,* II, xxx, n. 3: ... in vase aureo vel argenteo, saltem intus deaurato.

^.R.C., 31 August, 1867, η. 3162.6.[4] An permitti possit Ciborium, seu sacra Pyxis, ex cupro deaurato? *Resp.* Affirmative.

The point for decision is not what is most fitting and becoming in a vessel which is to contain the Holy Eucharist, nor are we asked to determine the kind of grave necessity which would permit the non-observance of the law. The question is whether, granted the lawfulness of silver or a metal baser than silver, which is not in dispute, there is an obligation to have this metal gilded within.

The texts quoted above arc not, perhaps, absolutely conclusive. The *Caeremoniale Episcoporum* directs "silver" gilded within, but silver is certainly not now of obligation in the common law; T.R.C., n. 3162,[5] permits "copper" gilt without directing expressly that copper which is not gilded is forbidden.

Nevertheless, it is unmistakably implied in T.R.C., n. 3162, that copper is permissible provided it is gilded, and in our view, therefore, the minimum required by the common law is that the ciborium must be gilded within, no matter of what material it is made. The liturgical writers we have consulted, and the commentators on canon 1270, give this interpretation: O'Connell, *Celebration of Mass,* I, p. 252; J.P.R. in *The Clergy Review,* 1959, XVII, p. 83; Vermcersch-Crcusen, *Epitome* (1934), II, n. 595: "ncque ex cupro, nisi sit intus deauratum"; *Directions for the Use of Altar Societies* (1933), P· 45; O'Kanc, *Rubrics of the Roman Ritual* (1938), n. 578; *Ecclesiastical Review,* 1904, XXXI, p. 227.

On the other hand, Gasparri, *De Eucharistia,* n. 1005, after quoting

[1] N. 55x1.
[2] N. 3162.6.
[3] II, xxix, 2.

5.R.C., n. 3162, states: "Imo propter verba generalia Ritualis Romani non bene constat de vero inaurationis praecepto pro ciborio, sicuti constat pro patena." One may, therefore, relying on Gasparri's authority, hold that there is no certain common law requiring the ciborium to be gilded within, though the whole weight of opinion is to the contrary. Local law in some places requires silver gilt.

**698.—** Ciborium Veil

*When distributing Holy Communion, should the priest remove the ciborium veil before removing the lid? Many priests remove both lid and veil in one action.*

*Rituale Romanum,* IV, ii: . . . extrahit pyxidem, et illam super corporale depositam discooperit. As far as we can discover, this is the only rubric on the subject and it is not amplified by any instructions from the Congregation of Rites.

One modern commentator, Croegaert, *Caeremoniale,* II, p. 275 (1955), sanctions a practice which approximates to that of many priests who are accustomed to remove both lid and veil in one action: "Pyxidem discooperit et cooperculum cum velo super corporale deponit." Many other writers merely repeat the words of the rubric.

In our view the correct method is first to remove the veil and place it outside the corporal; then the lid, which should be placed on the corporal. This is the teaching of many rubricians, e.g. S.L.T. in the American *Ecclesiastical Review,* 1905, XXXII, p. 273; O'Callaghan, *Sacred Ceremonies ofRow Mass* (1924), p. 170; Hebert, *Lefons de Uturgie,* I, p. 284. It is taught in two places by Fr O'Connell, a most exact and careful writer who is *facile princeps* amongst all the commentators on the subject: *The Celebration of Mass* (1940), II, pp. 152 and 156.

The reasons for the above teaching arc not given by these rubricians. We may suggest, firstly, that the alternative method is, liturgically speaking, somewhat slovenly; secondly, as noted by Wuest-Mullaney in *Matters Liturgical* (1926), p. 102, there is some danger of touching and disturbing the sacred species if the veil is removed at the same time as the lid. There is, indeed, no explicit rubric against the practice, but if we may adapt a term from the dogmatic theologians, the correct practice might be called a liturgical "conclusion" drawn from premises one of which is a liturgical rule and the other perceived by the light of unaided reason: in principle a veil should not be placed on the corporal; but the lid of the ciborium should, because it pertains to a vessel which cither contains the sacred species or is unpurified. The veil, accordingly, must be parted from the lid, in order to put each where it belongs, and it is easier to remove the veil first before the lid.

*Should the silk covering always veil the ciborium* (7) *during the Mass at which fresh particles are being consecrated and (ii) when the ciborium is empty after purification?*

(i) By "veil" in this connexion is chiefly meant the silk covering which it placed over the tabernacle and over all vessels containing the reserved,

sacred species. The rubrics in R/7. *Celebr. Miss.*, II, 3, and in the following sections, do not expressly take into account the circumstance of Mass being said at an altar with a tabernacle; but X, 7, directs the rubrics which conclude the Mass on Holy Thursday to be observed whenever the sacred species are to remain on the altar till the end of Mass, and the celebrant is directed to cover the chalice containing the reserved Host with a veil immediately after he has consumed the Precious Blood. Accordingly, this is the precise time when the veil should be put over the consecrated ciborium, which is then placed in the tabernacle if the altar has one. It is incorrect to cover the ciborium immediately after its consecration, firstly, because of the above rubrics; secondly, because the principle is that the sacred species should be covered with a veil when reserved, but the ciborium docs not begin to be reserved until the Mass is concluded with the consumption of the oblation.

(ii) But, unhappily, "veil" has another meaning in more recent instructions of J'.R.C., based on the principle, as far as these matters are subject to a principle, that sacred vessels when not actually in use should be veiled from the public gaze. Thus n. 4268.7 directed the monstrance to be covered with a veil. On this principle many writers hold that the ciborium should be veiled both before the offertory and after its purification; some favour a linen veil. There are no explicit rubrics or instructions on the point, and one is consequently free to veil the ciborium or not at times other than between the Offertory and the Communion of the Mass.[1]

jhgi

### 699.— The Monstrance

*A lunette purchased fairly recently is so constructed that the Blessed Sacrament touches the glass, and it is said by the owner that this is not absolutely forbidden, or, at least, is not forbidden "sub gravi". Is there any truth in this view?*

There are two containers used for exposing the Blessed Sacrament in the monstrance. The common type, which, with some variations, has always been favoured in Rome, consists of a silver gilt holder in the shape of a crescent, or arc of a circle, between which the Sacred Host is placed; a comparatively new style of this type, very simple and effective and easily purified, is rapidly becoming universal; the Host is gripped between two segments by the natural spring of the metal on rather the same principle as the ordinary wire paper-fastener. The other type is of French origin and encloses the Host in a circular container with glass or crystal back and front; no pyx is necessary, since the whole container is placed in the monstrance, which may itself be fitted with glass or not. There are many variations of this French type, and the only one which is not permissible is the kind in which the Blessed Sacrament reposes on the glass or crystal.

The general rule for a pyx excludes the use of glass, since it should be made "ex solida decentique materia", as ordered by *Rituale Romanum,* IV, i, 5, and canon 1270 of the Code. That it should be of gold or silver gilt is directed by *Caeremoniale Episcoporum,* II, 29, and local law frequently makes this obligatory. J'.R.C., 30 January, 1880,[2] forbade the use of a glass pyx.

The lunette or its container is, for the time being, a pyx, and glass should

1 O'Connell, *Celebration of Mass.* II, p. 56, n. 3.
3 N. 3511·

be excluded asa conclusion from the general principleof theformerparagraph. Nevertheless, an exception is made, and the French pattern is permitted by *S.R.C.,* 14 January, 1898, but the vessel must be so constructed that the Blessed Sacrament docs not actually repose on the glass, e.g. the law would be observed by having a container with broad silver gilt rims. "In plurimis Galliae ecclesiis usus invaluit postremis hisce temporibus sacram Hostiam, quae in Ostcnsorio exponenda est, recondendi intra duo crystalla apte cohaerentia, eamque in Tabernaculo reponendi absque ulla capsula, seu custodia. Hinc a Sacrorum Rituum Congregatione expostulatum fuit: An eiusmodi praxis licita sit? . . . proposito dubio respondendum censuit: Affirmative, dummodo sacra Hostia in dictis crystallis bene sit clausa atque crystalla non tangat, iuxta Decreta alias edita."[1]

Probably the view that it is permitted for the Blessed Sacrament to touch the glass is due to misunderstanding the directions of 5.R.C. which permit the French type. There is a private letter from the Cardinal Prefect in 1885 deprecating any official inquiry on the lawfulness of reserving the Holy Eucharist between two glass discs, since the official answer would have to be against it.[2] But it is not clear, in this letter, that the Blessed Sacrament is reposing on the glass, and, in any case, the reply we have given above is dated some years later and is an official decision.

*After benediction, when the Sacred Host is taken from the monstrance, should tbe monstrance be purified?*

*We* know of no law requiring the monstrance to be purified, but on general principles care should be taken that no fragments of the Sacred Host are left therein, and it suffices to inspect the monstrance for this purpose, as is directed when purifying the communion plate; that is to say, it is unnecessary always to pass one's fingers over the interior, as is done when purifying the paten at Mass, since the Sacred Host has not touched the interior of the monstrance. It suffices, without developing an undue scrupulosity, to see whether there are any particles fallen from the Host. Thus Croegaert, *Caeremoniale,* II, p. 272: "Ostcnsorium diligenter examinandum est: si nullum fragmentum apparet, Sacerdos illud deponit extra Corporale. . . ."

## 700.— Touching Sacred Vessels

IFTw/ *is the present law with regard to lay sacristans handling, after their purification, the chalice and other sacred vessels?*

Canon 1306, §1. Curandum ne calix cum patena et ante lotionem purificatoria, pallae ct corporalia, quae adhibita fuere in sacrificio Missae, tangantur, nisi a clericis vel ab iis qui qui eorum custodiam habent.

(i) The directions of this canon are less strict than some of the previous instructions of the *Congregation of Rites.* This observation refers chiefly to the articles subject to the prohibition, which are chalice and paten, purificators, palls and corporals used at Mass and not yet washed. It follows from

1N. 5974·
*11'Ami du Cltrgi,* 1927. P· 775·

this clear definition that other sacred vessels such as the monstrance, lunette and ciborium are not included, even though it would seem that the regulation should be extended to them for the same reason as to the chalice—namely, that they have touched or contained the Holy Eucharist. Some commentators, indeed, include these vessels, as Callcwacrt in *Collationes Brngenses,* 1925, p. 135; others include the ciborium but exclude the monstrance, as in *Directionsfor the Use ofAltar Societies, 1955,* p. 43. It may well be that local law applies the prohibition to these vessels, since it encourages reverence for holy things; it is therefore to be urged, as a counsel, that they should not be handled unnecessarily by unauthorized persons. But it cannot be said that the Code forbids these vessels to be handled by anyone except those mentioned in the canon. Similarly, the prohibition cannot be held to apply to sacred linen not actually used at Mass, e.g. the tabernacle corporal or the purificator used after distributing Holy Communion. Cf. Coronata, *Institutiones,* II, η. 887; Vcrmeersch-Creusen, *Epitome,* II, η. 635; Claeys-Bouuaert, *Manuale laris Canonici,* II, η. ιζο.

(ii) Besides tonsured clerics, the canon permits the sacred vessels to be handled by those in whose charge they are placed, which includes craftsmen for the work of restoration, but applies primarily to the sacristan. J'.R.C., i February, 1907, which deals expressly with the preparation of the chalice for Mass, implies that anyone not a cleric needs an apostolic induit for touching sacred vessels;[1] but this is dearly no longer necessary in the case of sacristans, and it is hard to imagine to whom this clause can now apply, though all the text-books continue to mention it. Anyone, even though it be only for a short time, may be authorized by the rector of the church to take charge of these sacred vessels, and thereby they have the right to touch them. All the text-books agree that the sacristan in question may be a nun, and there exist ancient induits expressly conceding the right to religious women.[2] But though the current text-books by expressly mentioning nuns seem to imply that other women may not touch the sacred vessels, we can find no such prohibition in the law as it exists at present. Canon 1306, §1, makes no distinction, and, accordingly, Coronata, *loc. cit.,* is of the opinion that the rule does not exclude them. We think this is correct, though it remains open to any rector of a church not to have a woman sacristan if he so desires.

(iii) Two further small points to complete the subject. Even the older authors, e.g. De Hcrdt, *Sacrae Eitnrgiae Praxis,* I, n. 175, hold that touching sacred vessels means "manu nuda", and many post-Codc writers give a similar interpretation.[3] Moreover, supposing that some unauthorized person does handle these vessels, it is permissible to hold, we think, with Cappello,[4] that it is not even venially sinful, since the word "curandum" of canon 1306, §1, excludes the notion of a precept; many of the earlier writers taught that it was a precept binding *sub levi.* It must be admitted, therefore, that the precaution of getting a papal induit, as mentioned in J'.R.C., 4198.15, seems wholly unnecessary at the present day, and it is all the more surprising to find an induit being issued in 1927, and published in *Ephemerides Litnrgicae,* 1928, p. 401, granting this permission, amongst other things, to the Sisters of Charity who act as sacristans.

[1] N. 4198.15.
[1] Gaspard, *De Eucharistia.* Π, n. 757.
[1] Génicot, *TbtoL Moralisai.* n. 282.
* Dr *Sacramentis.* I, n. 804.

### 701.—Sale of Blessed Objects

*After stating the usual doctrine that there is no simony in selling a blessed or indulgenced object, provided the price is not increased by reason of its spiritual value annexed, Prümmer, II,* §562, *adds that the Church forbids, nevertheless, the sale of blessed objects in order to prevent abuses. Is this correct?*

Canon 730: Non habetur simonia . . . cum datur res temporalis pro re temporali, quae tanquam sublectum habeat adnexum aliquid spirituale, ex gr., calix consecratus, dummodo pretium non augeatur propter adnexam rem spiritualem.

Canon 1305,51: Sacra supellex benedicta aut consecrata benedictionem aut consecrationem amittit . . . si ad usus indecoros adhibita vel publicae venditioni exposita fuerit.

Prümmer, *Theol. Moralis,* II, §562: sed nihilominus Ecclesia iure positivo prohibuit, ne res benedictae vendantur, ad praecavendos abusus possibiles. Cf. Decr. Authent. S. C. Indulg., n. 78 et 82.

Prümmer is correct only in the sense that the Church does occasionally forbid the sale of a blessed object, owing to special reasons for fearing abuses in a given case. The decree of the *Congregation of Indulgences* referred to as n. 82 is that given in *Fontes,* n. 4962, dated 14 December, 1722, which refers to the previous one, n. 78, dated 4 June, 1721. It forbids the sale of pious objects which have touched the holy places and relics in Palestine. The petitioner contended that in estimating the just price he took into account his travelling expenses, customs charges, and what not, but that he did not include in the just price the fact that the objects had touched the holy places or had been indulgcnccd by Innocent XI. The sacred Congregation refused him the faculty of selling these pious objects, since there were, no doubt, special reasons for fearing abuses in the transaction.

In principle the sale of a blessed object, for its material value, is not forbidden, and its lawfulness is implied in the canons cited above.

The doctrine is more carefully and correctly expressed by Prümmer, III, §544, c.: "Ad evitandam etiam speciem simoniae Ecclesia graviter prohibuit sub poena amissionis indulgentiarum, nc res indulgentiis ditatae vendantur aut emantur, etiamsi inde nihil lucrum percipitur?'

## §7. VESTMENTS

### 702.—Vestments Requiring Blessing

*May a priest, without any special delegation, bless the alb, amice and girdle? In other words, may one restrict the term "indumenta sacerdotalia", the blessing of which is reserved, to the chasuble, stole and maniple?*

*Rituale Romanum,* VIII, xx, places the form "Benedictio Sacerdotalium Indumentorum" amongst the blessings reserved to the bishop or to others enjoying the faculty. These include, from canon 1304, the parish priest, the Ordinary's delegate, the religious superior and his delegate. It is the custom

in many places for vicars forane to be delegated, either for their deanery or for the whole diocese. If the blessing of these vestments is given without proper delegation by a simple priest, it is valid but unlawful; canon 1147, §3: "Benedictio reservata quae a presbytero detur sine necessaria licentia, illicita est, sed valida, nisi in reservatione Sedes Apostolica aliud expresserit."

We think that the alb, etc., are clearly included. The rubrics of the Missal draw no distinction in directing that the "paramenta" should be blessed by the bishop or his delegate, both in R/7. *Celebr. Miss.,* I, 2, and in *De Defectibus,* X, i, and the manualists take it for granted that they arc included, e.g. Priimmcr, *Tbeol. Moralis,* III, §298.

### 703.— Blessing Vestments

*Does the parish priest possess the power to delegate his curates to bless Mass vestments?*

Canon 1304 mentions, amongst others, the "parochus pro ecclesiis et oratoriis in territorio suae paroeciae, et rectores ecclesiarum pro suis ecclesiis", as possessing the power to bless sacred vestments, a blessing which the Ritual numbers amongst those reserved to bishops. If this power is to be regarded as one of ordinary jurisdiction, it would appear from canon 199, §1, that it can be delegated: "Qui jurisdictionis potestatem habet ordinariam, potest eam alteri ex toto vel ex parte delegare, nisi aliud expresse jure caveatur." Cappello holds that this power is "ordinary" and therefore may be delegated.[1] Vermeersch, Creusen, Cicognani and others teach the contrary. Their reasons are that canon 1304 expressly grants the power of delegating to religious superiors, but is silent regarding the delegating power of the parochus.

Allowing the probability of both opinions concerning the fact of ordinary jurisdiction, a writer in *I'Ami du Clergé* approaches the question from another angle.[2] The parochus is at least "delegated" by the Holy See to bless vestments and the power can be subdclegatcd from canon 199, §2: "Etiam potesttas jurisdictionis ab Apostolica Sede delegata subdelegari potest sive ad actum, sive etiam habitualiter, nisi electa fuerit industria personae aut subdelcgatio prohibita." The notion of the parochus being delegated "ex industria personae" is clearly not applicable here, since no special qualities are required for the blessing of vestments; that subdelcgation is prohibited may be drawn, perhaps, from the wording of canon 1504 which expressly concedes the point to religious superiors, but says nothing about the parochus.

Our conclusion must be that there is here a *dubium juris* and that, until the point is officially settled, a parish priest may authorize another priest to bless the vestments "pro ecclesiis et oratoriis in territorio suae paroeciae".

*May the parish priest bless any vestments brought to him for the purpose, even though not intended for use in his parish?*

1 D/ *Sacram.*^ §114.8.
* 1929. P· 557"» >947» P· 632·

The faculty of blessing vestments, which was formerly reserved to bishops, and usually delegated to priests within their jurisdiction by a clause in the diocesan *pagella* of faculties, is now possessed by parish priests from canon 1304.

Its use is restricted, as the canon clearly states, to vestments for the churches or oratories of his parish, and he may not lawfully bless any other vestments. This is evident from the sequence of powers in this canon: (1) Bishops may bless vestments (no restriction); (2) Ordinaries lacking episcopal consecration may bless vestments for the churches of their territory; (3) Parish priests for the churches and oratories within the parish.

It should be noted, from canon 1147, §3, that a reserved blessing given by a priest without necessary permission is unlawful but not invalid.

## 704.—Gothic Vestments

IPTw/ *is the present ruling with regard to the use of Gothic vestments in England? If a student, for example, were offered a set of Gothic vestments as an ordination present, could he lawfully accept and use them? If he were offered a set of vestments, could he ask that they be Gothic?*

There is no special ruling, as far as we are aware, for England, but it is open to each Ordinary to interpret for his territory the instructions of the Holy See, 5.R.C., 9 December, 1925, the text of which is as follows:

"A Sacra Rituum Congregatione nuper expostulatum est: An in conficiendis et adhibendis paramentis pro Missae sacrificio sacrisque functionibus liceat recedere ab usu in Ecclesia Romana recepto, aliumque modum et formam etiam antiquam inducere?

Et Sacra eadem Congregatio, audito specialis Commissionis suffragio, omnibus perpensis, respondendum censuit: Recedere non licere, inconsulta Sancta Sede, iuxta Decretum seu Litteras circulares Sacrae Rituum Congregationis ad Rmos Ordinarios datas sub dic 21 Augusti, 1863.

Atque ita, Summo Pontifice Pio XI approbante, rescripsit, declaravit et servari jussit, die 9 Decembris, 1925.

En harum litterarum exemplum:

Rme Domine uti Frater,

Quum renunciantibus nonnullis Rmis Episcopis aliisque Ecclesiasticis et Laicis viris, Sanctam Sedem non lateret quasdam in Anglia, Galliis, Germania et Belgio Dioeceses immutasse formam sacrarum vestium, quae in celebratione Sacrosancti Missae Sacrificii adhibentur casque ad stylum quem dicunt gothicum elegantiori quidem opere conformasse; Sacra Congregatio legitimis pro tuendis ritibus praeposita super huiusmodi mutatione accuratum examen instituere haud praetermisit.

Ex hoc porro examine, quamvis eadem Sacra Congregatio probe nosceret sacras illas vestes stylum gothicum praeseferentes praecipue sacculis XIII, XIV, et XV obtinuisse, aeque tamen animadvertit Ecclesiam Romanam aliasque latini ritus per orbem Ecclesias, S. Apostolica minime reclamante, a saeculo XVI, nempe ab ipsa propemodum Concilii Tridcntini aetate, usque ad haec nostra tempora illarum reliquisse usum; simulque, eadem perdurante disciplina necnon Sede Sancta inconsulta, nihil innovari censuit, ut pluries Summi Pontifices in suis edocuere Constitutionibus, sapienter monentes

mutationes istas, utpote probato Ecclesiae mori contrarias, saepe perturbationes producere posse, et fidelium animos in admirationem inducere. Sed quoniam Sacrorum Rituum Congregatio arbitratur alicuius ponderis esse posse rationes, quae praesentem mutationem persuaserunt, hinc, audito Sanctissimi Domini nostri Pii Papae IX oraculo, verbis amantissimis invitare ccnsuit Amplitudinem Tuam, ut, quatenus in tua Dioecesi huiusmodi mutationes locum habuerint, rationes ipsas exponere velis, quae illis causas dederunt. Interim Amplitudini Tuae fausta omnia a Domino adprccor.

Romae die 21 Augusti, 1863."

Inasmuch as "Gothic" vestments are in a variety of sizes, we take as the normal that which is described and illustrated in *Directionsfor the Use ofAltar Societies,* opposite page 58. This is the familiar kind which is sold by church furnishers.

(i) It will be observed that the immediate object of this instruction is not a direct condemnation of any particular form of vestment. It directs that no departure from the established use of the Roman Church is to be permitted without previously consulting the Holy Sec. The terms of the document are very wide and include all vestments used in sacred functions. Actually the discussion may be restricted, for all practical purposes, to what is lawful in the shape and size of the Mass chasuble. There are various established shapes of what is loosely called "Roman". The one common in Rome is a much ampler and more dignified vestment than the "French" or the "Spanish" variation. What is loosely called "Gothic" differs from all of these. It stretches from what is called sometimes, in England, the "Pugin" shape, which is not larger than that used in Rome, and has a cross on the back, to an immense flowing garment reaching to the feet, having rather the appearance of a cope of soft material. There are some who refer the instruction to this latter type of vestment,[1] which has fallen completely into disuse. It is an interpretation which, we think, cannot be sustained. From the document it is clear that the reference is to the type of vestment common from the thirteenth to the sixteenth centuries. It is the type favoured by Roulin, ample in size—reaching a little below the knees—and ornamented with a "Y"-shapcd orphrey. It is "Gothic" only in the sense that the reduction from the immense antique shape coincided with the introduction of "Gothic" architecture; "ample" or "mediaeval" is a better description than "Gothic".

(ii) Canon 1296, §5: "Circa materiam et formam sacrae supellectilis, serventur praescripta liturgica, ecclesiastica traditio et, meliore quo fieri potest modo, etiam artis sacrae leges." Certain directions and rubrics of liturgical books can be observed only if the celebrant is wearing an ample chasuble. *Caerem. Epp.,* II, viii: ". . . hinc inde super brachia aptatur, et revolvitur diligenter, ne illum impediat". *Rit. Celebr. Miss.,* VIII, 6: ". . . minister manu sinistra elevat fimbrias posteriores Planetae, ne ipsum celebrantem impediat". Cf. also VIII, 8. Artistically it is beyond dispute that nearly everyone who is competent to discuss the subject declares in favour of the ample chasuble. We are left with the question of ecclesiastical tradition, for the point stressed in the document is that departure from established usage will cause disturbance amongst the faithful: "perturbationes et admiratio". The situation is almost exactly similar to that which had arisen

[1] Cf. N.R.T., 1916, p. 500.

over the *Mina Dialogata,*1 and both have their origin in a deep love for the liturgy and the dignity of divine worship.

(iii) As in the case of *Mina Dialogata*, so also in this question of "Gothic" vestments: it is the office of Ordinaries to prevent abuse. In the letter of 1863 they were invited "verbis amantissimis" to consult the Holy See before introducing any changes in the shape of vestments, and to explain the cause of the proposed change. We know of one example of this being done. A Spanish priest having received a gift of "Gothic" vestments applied through the Ordinary of Barcelona for permission to use them, in order to save the expense of buying those of the customary form. The answer was distinctly discouraging: "*Negative* et ad mentem. Mens est: Planetae formae gothicac reducuntur in formam latinam."2 We do not know the reasons for this answer, and we have not got the *votum* of the Ordinary; nor have we a description of the chasubles condemned to the shears. It can be easily understood that the contrast between an exiguous Spanish vestment and, perhaps, an unusually ample "Gothic" one would cause disturbance amongst the faithful in the locality.

(iv) But we do know, and everyone knows, that the use of the ample chasuble is spreading very quickly in numbers of places. They are manufactured in thousands by ecclesiastical furnishers in Bruges, London and elsewhere. Cathedral and abbatial churches use them. Bishops and prelates, whose obedient veneration for the Holy See is patent to all, often prefer them. They have been shown in hundreds in Roman exhibitions. It is said that the Holy Father himself has been known to use them. How can these things be harmonized with the general tenour of the 1925 decree? We think the solution is that it is forbidden to *introduce* them in places where the innovation would cause disturbance to the faithful. If, in any place, the Ordinary has forbidden their use, his prohibition would chiefly be because of this danger. There is an obligation, of course, to obey his ruling. In the experience of most people, in this country at least, the "Gothic" or ample chasuble does cause "admiratio" among the people; but it is admiration in the best sense of the word. They admire its dignity and beauty. Moreover, in many parts of the country, the people have been familiar with this kind of chasuble as far back as memory stretches, and they would be rather surprised at any other kind.

The answer, therefore, to the query is that the student may accept or ask for a set of "Gothic" vestments. But he may not use them in those places where the Ordinary, or any other lawful superior, has forbidden them.

The most recent and authoritative survey of the subject is in *Ephemerides Eiturgicae* (lus et Praxis), 1947, p. 117. The solution we have given is in principle supported and examples are cited of permissions having been obtained for the use of ample chasubles, in some instances without any qualification, in other instances only until they arc worn out.

### 705.—Rose-coloured Vestacents

*Is there anyjustificationfor the use of rose-coloured vestments on thefeast ofHoly Innocents?*

*S.R.C., 15 June, 1929; printed in *Periodica,* 1929, p. 246.

An anonymous writer in the *Ecclesiastical Review,* 1902, XXVII, p. 661, states that rose-colour is to be used on the octave of Holy Innocents, but no authority is given, and the liturgical writers we have consulted, Crocgacrt, De Hcrdt and others, restrict its use to *Eaefare* and *Gaudete* Sundays. The writer mentioned gives symbolic reasons for the colour, the blend of red and white representing martyrdom and virginity, but the usual explanation for its use on *Eaetare* Sunday is the fact that the Roman ceremony of blessing the golden rose takes place on that day; because of its analogy with mid-Lcnt, rose-colour came to be used on *Gaudete* Sunday as well. The only justification for its use apart from these two Sundays would be a duly accepted local custom. We cannot trace the existence of such a custom anywhere, but it is well known that departures from the common liturgical law are permitted in Spain, such as the use of blue vestments on the feast of the Immaculate Conception; Gasparri records that wax-coloured vestments are permitted by the Holy See in certain dioceses.[1] Customs of this kind are the more easily accepted, since the law determining colours in vestments is generally considered to bind only *sub levi,* and colours not liturgically correct may be used for any reasonable cause, for example, the lack of vestments of the appropriate colour.

If there is no local custom and no justifying cause, it is wrong to use rose-coloured vestments except on the two Sundays as directed by *Caerem. Epp.,* II, 12, it, and by various decrees J.R.C.

### 706.—Double Vestments.

*Is there any law forbidding the use of a reversible chasuble which is white on one side and black on the otherl*

Canon 1296, §3: Circa materiam et formam sacrae supellectilis, serventur praescripta liturgica, ecclesiastica traditio et, meliore quo fieri potest modo, etiam artis sacrae leges.

*Ritus Servandus,* I, n. 2: paramenta . . . integra, et decenter munda, ac pulchra.

5.R.C. n. 2675: (de confusione colorum in paramentis) Serventur omnino Rubricae Generales, facta tamen potestate Episcopo indulgendi, ut in ecclesiis pauperibus permittat illis uti, donec consumentur. Cf. also nn. 2682, 50; 2769, 5.

5.R.C. 3086, 7: Anne in administrando Sacramento Baptismi licite sacerdos uti possit Stola bicolori, ex una parte violacea et ex altera alba? *Resp.* Affirmative.

(i) The bi-coloured reversible chasuble appears to offend in many respects against liturgical laws. The chasuble is primarily a garment, not a coloured ornament, and should at least conform to the conventions usually observed in the wearing of secular apparel; one can scarcely imagine any garment so constructed as to be worn, if so desired, inside out. The bi-colourcd reversible vestment is certainly not traditional; nor is it in conformity with artistic standards, for it is an elementary rule to have the colour of the interior lining agreeable with that of the vestment. For these reasons we

[1] *De Ejubarittia,* §695,

think a priest should regard a vestment of this kind as normally forbidden by canon 1296, §5.

(ii) One would rather expect to find the vestment prohibited expressly by the *Congregation of PJtes,* but we arc not aware of any decree exactly in this sense. For n. 2675 refers not to a reversible vestment but to one which is multicoloured; and n. 3086, 7, does permit the reversible stole at baptisms, an obvious convenience in the rite, though we are not prepared to extend this text to Mass vestments. In the absence of any express prohibition, writers both before and after the Code teach that the reversible chasuble may be tolerated, at least in those countries where it is customary. Thus Many, *De Missa* (1903), §122, 6, and Cappello, *De Sacramentis* (1938), §811.

Probably the best solution is to apply, by analogy, the ruling in n. 2675 : if there is some justifying reason, a priest need have no scruple in using the vestment. A reason would be the difficulty of obtaining a more becoming chasuble; or the poverty of the church; or the convenience of reducing one's luggage in the case of army chaplains or others who have to carry all the necessary Mass furniture about with them. This tolerant attitude is quite consistent with the view given above that, in normal circumstances, a reversible chasuble should be rejected as unliturgical.

## 707.— Folded Chasubles

*Why is the folded chasuble worn, instead of dalmatic and funicle, by the deacon and subdeacon at certain Masses? The reason commonly given is that the garment is folded to facilitate movement, but this does not quite explain why it is removed during the singing of the epistle, and why the deacon replaces it by the broad stole.*

"*Rjebricae Generales,* XIX, 5 : Dalmatica et Tunicella utuntur Diaconus et Subdiaconus in Missa solcmni. . . .

6. In diebus vero ieiuniorum ... in cathedralibus et praecipuis ecclesiis utuntur planctis plicatis ante pectus: quam planctam diaconus dimittit cum lecturus est cvangelium, eaque tunc super sinistrum humerum super stolam complicatur; aut ponitur aliud genus stolae latioris in modum planetae plicatae: et facta communione resumit planctam, ut prius; similiter subdiaconus dimittit eam cum lecturus est epistolam, quam legit in alba, et ea finita, osculataquc celebrantis manu, planctam resumit, ut prius.

7. In minoribus autem ecclesiis, praedictis diebus ieiuniorum alba tantum amicti ministrant: Subdiaconus cum manipulo, Diaconus etiam cum stola ab humero sinistro pendente sub dexterum.

(i) It is certain that the liturgical chasuble was in origin the Roman *paenula* or *planeta,* a garment originally worn by laymen and ecclesiastics alike. Being used when walking out, as a protection against the weather, it was of a sombre colour. By the ninth century it had become an ecclesiastical vestment worn by all the ministers, but definite traces of its processional use and its sombre appearance still remain in the liturgy. Up to the thirteenth century the chasuble retained the ancient form of the *paenula,* a large circular vestment with an aperture in the centre for the head, and the modern tendency is to return to this ample style.

Λ vestment of this character, even when made of supple material, had to be raised in front when the hands were employed, as in *Caerem. Epp.,* II, vüi,

19: "hinc indc super brachia aptatur, et revolvitur diligenter, ne ilium impediat". It appears that assistant ministers, being constantly employed, always wore the vestment folded "ante pectus"; or, as Callewacrt suggests, it was done to distinguish them from the celebrant.[1] Moreover, even when folded "ante pectus", it was an encumbrance for one who had to hold and turn the leaves of a Large book, and it was therefore removed whilst this office was being performed. This reason why the subdeacon removes the folded chasuble when singing the epistle, though not entirely satisfactory, is given by Callewaert, and it is the only one we can discover; other writers simply admit that they can find no satisfactory explanation of this rubric.

For the same reason the deacon removes the folded chasuble before singing the gospel and, being constantly employed up to the communion, does not resume it immediately after the gospel, but retains it gathered up over the left shoulder, in much the same way as soldiers still carry cloaks not in use. When the later form of heavy rigid chasuble was introduced, this folding was clearly impossible, and a wide band of similar material was used instead. The rubric in our current Missal sanctions either use. The deacon does not discard it entirely, since otherwise he alone, amongst the sacred ministers in chasubles, would be without one, as Callewacrt suggests.

(ii) In contrast to the sombre primitive *planeta,* the dalmatic was ornate and joyous, a characteristic preserved in the Ordinal: "Tunica iucunditatis et indumento laetitiae induat te Dominus." It was worn, accordingly, on festive occasions, under the *planeta,* which was removed on arriving at the altar; on penitential days it was not worn and the *plancta* was retained during the Mass, subject to the rule described above which required its removal for certain functions.

(iii) The direction of the rubric that folded chasubles arc to be used only in the principal churches is an added difficulty to a question already extremely obscure. The primitive Roman *Ordines* deal only with the large basilicas and are silent about the smaller churches; perhaps it is assumed that smaller churches will not have a sufficient number of chasubles for the comparatively rare occasions when they have to be used instead of dalmatics; in any case, J.R.C., n. 3552.7, includes parish churches amongst those in which folded chasubles are permitted.

### 708.—Preaching Stole

*Is the custom of wearing a stole while preaching to be followed by all secular priests, or is it optional?*

The various answers of the *Congregation of Kites* on the use of a stole order it to be worn universally on certain occasions, e.g. during the funeral office, and forbid its use universally on other occasions, e.g. during a funeral oration. Midway between these two categories its use is ordered, not universally, but only in places where the custom exists; the use of a stole during preaching is, so far as our knowledge goes, customary in England and, therefore, should be continued, in spite of the protests of certain priests

[1] *Ephemerides Uturgirae)* 1936, p. 73.
[5] Dom B. Rousseau in *Revue Ldturpque et Monastique,* 1923, p. 132.

who dislike the practice. "Viget in aliquibus locis usus deferendi stolam in Verbi Domini annuntiatione, etiam extra Missarum solemnia. Quaeritur inde: An sit dictus usus legitimus, et an obliget regulares in suis saltem ecclesiis? Et quatenus affirmative: Cuius coloris debeat esse praedicta stola: an semper coloris albi; vel potius dici currentis? *Resp.* Affirmative in omnibus, ad primam partem; ad secundam vero, color respondeat officio diei."[1] "Stolam a Sacerdote adhibendam esse quum conficit aut administrat sacramenta, aut officium aliquod facit quo Stola adhibenda sit; aut etiam cum concionatur, si in eo loco adest consuetudo."[2]

## 709.—Marriage Rite: Vestments

*When a nuptial Massfollows, how should the priest who is witnessing the consent of the parties be vested, particularly when the civil formalities take place in the sacristy before the Mass?*

*S.R.C.,* 31 August, 1867, n. 3158, 3: Utrum pro superpelliceo uti valeat sacerdos alba cum stola ad pectus transversa . . . praesertim in celebrando matrimonio, cum immediate post absolutionem ritus Matrimonii Missam pro sponso et sponsa celebraturus sit: *Resp.* Si immediate sequitur Missa, sacerdos praeter albam et stolam induere debet etiam planctam.

Fr Dunne[3] observes that it is better for the civil declaration to take place after the Mass, which means that the registrar will be kept waiting for about half an hour. If this can be done conveniently the rubric offers no difficulty.

When the civil declaration occurs between the marriage and the Mass, we think that the proper observance of the rubrics requires the priest to be vested in cotta and stole, as in *Rituale Romanum,* VII, ii, 1. N. 3158 directs Mass vestments, with the exception of the maniple, when Mass follows Immediately, and by implication disapproves of the priest assisting at the marriage vested in an alb as the questioner suggested. The rubricians do not expressly discuss the point. Fortescue,[4]*in giving a description of the rite with the civil declaration before Mass, directs the priest to vest for Mass after the civil declaration. Dunne states that the priest does not put on the chasuble until he is ready to begin Mass, but he does not expressly direct the priest to wear an alb for the marriage rite, though this perhaps is implied in his description. Since the directions arc capable of more than one interpretation, priests may choose whichever they please, but as an alternative to cotta and stole, which seems correct, we should prefer alb, stole and chasuble.[6]

Some favour the wearing of a cope when the Mass does not follow immediately, and the correctness of this is implied in the directions of Ordinaries who prohibit its use only at mixed marriages. At the annual meeting of the English Bishops, 1898, it was decided, amongst other points affecting the celebration of mixed marriages, that the assisting priest must not wear a cope. This episcopal regulation has been published in various dioceses:

1 J.R.C., 51 August, 1867, n. 3157.6.
1 N. 3185; cf. also n. 3117; *Coltat. Brngen.,* 1951, p. 251.
• *Tbe Ritual Explained,* p. 134.
4 *The Ceremonies of tbe Roman Rite* (1920), p. 408.
4 Cf. Fortescue-O'Connell, *Tbe Ceremonies of tbe Roman Rite,* p. 396.

*Westminster Synod,* xxxvii, 1898, p. 10; *Lancaster Statutes,* 1935, n. 138 (iii); *Middlesbrough Statutes,* 1933, n. 174, 3; *Leeds Synods,* 1911, p. 91.

But we cannot find any certain decision on the point in the common law, except when a bishop is functioning, when the cope is prescribed.[1] If the nuptial blessing is given in the short form, the use of a cope seems to be in accordance with the principle contained in *Rubricae Generales,* xix, nn. 3 and 4: "Pluviali utitur in Processionibus ct Benedictionibus quae fiunt in Altari. . . . Cum celebrans utitur Pluviali, semper deponit Manipulant."[2] Even when the nuptial blessing is not given, there is no prohibition of wearing a cope at a Catholic marriage; there is nothing liturgically absurd in wearing it when officiating at the administration of a sacrament: the Ritual, for example, prescribes a cope for the rite of adult baptism. Its use, if justified at marriages, must be traced to custom. One has no wish to see this custom spread, particularly as it appears to encroach upon the usage of bishops, but there is certainly an argument for the use of a cope in the episcopal direction of 1898, and we think that the custom where it exists may lawfully continue.

## 710.—Removing the Maniple

*Is there a rule directing the maniple to be removed* (7) *by the celebrant or deacon when reading notices or preaching from the altar or pulpit, and* (77) *by the celebrant and ministers during the prayer for the king?*

(i) Relying on the principle that the maniple is exclusively for use during Mass, many rubricians teach that it should be removed at Mass during sermons, notices and prayer which arc not part of the liturgy. But we can discover no rubric or direction to this effect, with the exception of 5.R.C., n. 2326.4, which, by directing the maniple to be removed during the adoration of the cross on Good Friday, rather contradicts the principle, since this ceremony is distinctly a part of the liturgy of that day. Fortescue, *The Ceremonies of the Roman Rite Described (y$zo),* p. 124, is a good example of the teaching of rubricians on the point. O'Connell, *The Celebration of Mass,* III, p. 109, states, correctly we think, that there is no reason why the celebrant should remove the maniple when preaching, since the rubrics do not direct this to be done, and the sermon is part of the liturgy. We think, therefore, that there is no obligation from the rubrics to remove the maniple on the occasions mentioned, but one may follow the local custom. The custom of removing it is by no means universal in this country. Even the much abused Dale in *Ceremonial According to the Roman Rite* (1913), a book very widely used by the clergy at one time, correctly states on page 370 that there is no rule directing the removal of the maniple.

(ii) Similarly, we can find no direction requiring the maniple to be removed during the prayer for the king. If this should be done on the principle that the prayer is not part of the liturgy, it would appear that the same applies to the Leonine prayers, but priests are accustomed to retain the maniple whilst reciting the latter. Cf. Fortescue, *op. cit.,* pp. 64 and 129; *Irish Ecclesiastical Record,* 1945, LXVI, p. 303.

1 Moretti» *Caercmoniale,* IV, n. 2775.
3 *Epbtmeritks Lifurgicat,* 1926, p. 568.

It is quite likely, however, that when the prayer for the king was introduced during the time of Cardinal Wiseman, there may have been some direction from the hierarchy on this point, but we have not discovered any written law requiring the maniple to be removed.

## 711.—Ornamented Albs

*Are there any regulations restricting the use of ornamentation on the alb? The custom seems to be growing of adding, not only lace or worked embroidery, but coloured patterns corresponding to the colour of the vestments.*

There is no special regulation on the matter. The law requires the garment to be white and clean and this suffices. It may be ornamented, either apparelled in the mediaeval manner, or embroidered with coloured thread, or furnished with lace. The latter ornament is, in our view, objectionable because it appears that the alb, which should reach to the feet, is correspondingly shortened according to the width of the lace. The other methods are not open to this objection, and the only restriction is to avoid anything which appears effeminate or in bad taste.

A decree of 5 December, 1868, permits this ornamentation to take the form of crosses, chalices, and other sacred objects.[1] Another one, 16 June, 1893, permits canons to use "alba ornata fimbriis seu reticulo a cingulo deorsum", a mysterious addition which seems to consist of tassels or fringes. All these things are permissions or tolerations; if such ornamentation is used, at the base and on the sleeves of the alb, the colour should correspond with the colour of the vestment.[2]

## 712.—Gloves

*Is it correct for altar servers to wear white gloves?*

Amongst the sacred ministers and others assisting on the sanctuary, the only one entitled to wear gloves, as an ornament or vestment, is the bishop on the occasions when their use is directed by the rubrics. It is certainly incorrect for altar servers to wear gloves, girdles, capes, skull-caps or any other ornament beyond cassock and surplice; they take the place of clerics and arc vested accordingly.

As regards the laity, it is incorrect to approach the sacraments with gloved hands, not precisely because gloves are an ornament or vestment, but because social etiquette regards the ungloved hand as a mark of respect in the presence of a superior. The rule should, therefore, be observed, not only when receiving the sacraments, but on every occasion when the laity take part in some divine service.

[1] J.R.C., n. 3191.5.
[2] N. 4186.3.

### 713.—Vestments in Pageants

*Is it lawful io borrow vestments from a church in order to use them in a religious pageant illustrating the history of a Catholic foundation?*

The law is quite clear that vestments may not be used for profane purposes, but the commentators do not specify exactly the nature of these purposes, except to ban an obviously indecent and improper use. "De rebus sacris, utpotc paramentis sacerdotalibus ... alii probabiliter existimant hodie ita temperatum esse rigorem, ut praeciso contemptu aut scandalo taba sine peccato in usum profanum converti possint."[1] This doctrine is commonly taught, but it is supposed that the vestments, being worn out, arc to be cut up and used for some secular purpose; it does not touch directly on the question of borrowing them for an ecclesiastical pageant. Génicot comes nearer to the point: "Sacrilegium reale committit qui ornamenta sacerdotalia benedicta defert in ludo theatrali,"[2] but he appears to be thinking of the use of vestments on the part of an actor playing the rôle of a priest on a secular stage, an obviously improper use. Probably, the correct solution is that, subject to the ruling of ecclesiastical authority, their use in pageants is not unlawful.

## §8. CHURCH FURNITURE

### 714.—Baptismal Font

*What is the present liturgical law on the font and the material from which it is made?*

*Rituale Romanum,* II, i, 46: Baptisterium sit decenti loco et forma, materiaque solida, et quae aquam bene contineat, decenter ornatum, ct cancellis circumseptum, sera et clave munitum, atque ita obseratum, ut pulvis, vel aliae sordes intro non penetrent, in eoque, ubi commode fieri potest, depingatur seu collocetur imago sancti Joannis Christum baptizantis.

*Propaganda,* 14 March, 1922; *Sylloge,* n. 97, 5: Fontes baptismales, donec marmorei rite confecti haberi nequeant, adhibeantur ex lateribus coctis. . . .

The rubric is explicit except as to the material from which the font is to be made. Marble is recommended and is obligatory in some localities, though any solid material is permitted in the common law, even wood; but unless the material is non-porous (quae aquam bene contineat) it will be necessary to have a non-rusting metal container inserted, which should be easily removable for cleaning.

The same chapter of the Ritual, n. 60, requires: "Pelvis, scu bacile ad excipiendam aquam ex capite defluentem, nisi statim in sacrarium defluat." This is usually observed by a division in the basin of the font, the larger part containing the baptismal water, the smaller part empty and provided with a

[1] Vcrmccrsch, *Thiol. Moralis,* II, §211,
[1] *Tbeol. Moratis,* I, §282.

pipe leading into a sacrarium, thus observing conveniently the law which forbids the water used at baptism to be allowed to run back into the font; n. 11: . cavendum est, ne aqua ex infantis capitc in fontem, sed, vel in sacrarium Baptisterii prope ipsum fontem exstructum defluat, aut in aliquo vase ad hunc usum parato recepta, in ipsius Baptisterii, vel in Ecclesiae sacrarium effundatur". Cf. *Directionsfor Altar Societies,* p. 40; *Collât. Brugen.,* 1927, p. 349; Roulin, No/ *Eglises,* p. 643.

### 715.—Location of Baptistery

*It is proposed to erect the baptistery, in a new church, at the east end close to the high altar, in order that the faithful may follow more easily the administration of baptism. Is this position correct?*

*Roman Catechism,* II, xii, 61: . . . afferuntur enim, vel etiam adducuntur, qui baptismo initiandi sunt, ad Ecclesiae fores; atque ab eius introitu omnino prohibentur; quod indigni sint, qui domum Dei ingrediantur, antequam a se turpissimum servitutis iugum repulerint, et totos se Christo domino, eiusque iustissimo imperio addixerint.

We know of no modern text which explicitly defines the correct position of a baptistery. The current *Rituale Romanum,* II, i, 46, has "decenti loco" and the previous edition, n. 28, reads "locus est Ecclesia, in qua sit Fons baptismalis, vel certe Baptisterium prope Ecclesiam"; *S.R.C.,* η. 3104.9, deprecates using the sacristy for solemn baptism.

There arc many ancient examples of baptisteries separated from the church though adjacent to it, as provided for in the previous *Rituale Romanum,* and the liturgical movement in recent years tends to a revival of this practice, to the extent at least of making the baptistery very distinct from the church properly so called, though part of the same building. This ecclesiastical tradition is reflected in the words of the *Roman Catechism* quoted above, and though the words of the rite itself, "ingredere in templum Dei", suppose that the church is entered before baptism is administered, custom based on tradition has located the baptistery in the least sacred part of the edifice, namely, adjoining the narthex or porch at the west end of the church, not adjoining the altar at the east end. Moreover, the north end of the narthex, that is to say to the left on entering, is generally considered to be symbolically appropriate, since the north is the region of darkness.

Nevertheless, in the absence of an explicit law on the subject, baptisteries arc often situated at any convenient spot in the building. It is preferable to retain the liturgical tradition as required by Cardinal Vaughan's *Directions for Altar Societies,* p. 39: "near the main entrance to the church and on the left (or north) side".

### 716.—Mission Cross: Ordinary's Consent

*The erection of a mission cross requires amongst other things tbe local Ordinary's consent. Could this be regarded as implied in his permission to bold a mission? Or, if it was not expressly given, must one hold that tbe erection is invalid?*

*Preces et Pia Opera,* n. j88: Nota: Erigenda crux ex solida decoraque materia sit confecta; determinato loco adhaereat, vel basi firmiter sustentetur, benedicatur per sacerdotem qui in sacra Missione conciones habuerit; accedat insuper, pro his agendis, consensus Ordinarii loci.

Canon 1147, §5: Benedictio reservata quae a presbytero detur sine necessaria licentia, illicita est, sed valida, nisi in reservatione Sedes Apostolica aliud expresserit.

Canon 1279, §4: Si imagines, publicae venerationi expositae, sollemniter benedicantur, haec benedictio Ordinario reservatur, qui tamen potest eam cuilibet sacerdoti committere.

Canon 1680, §1: Nullitas actus tunc tantum habetur, cum . . . conditiones desiderantur a sacris canonibus requisitae sub poena nullitatis.

We cannot find this point discussed by the writers, but our opinion is, firstly, that the permission is not implied in authorizing a mission; secondly, that the erection of the cross without it is valid though unlawful. The phrase which is found at the end of *Preces et Pia Opera,* n. 588, seems to be related to canon 1279, §4: the local Ordinary's permission is required for the public erection of any cross or statue, as noted also in *PJtnale Rjotnanum,* VIII, xxix, and the formula for the indulgence reminds one of this fact. From canon 1147, §5, the blessing is valid. Authorizing a mission is something quite distinct from authorizing the public erection of a cross in the church, and the first cannot be held to imply the second: there may be, for example, some local laws about the furnishing of churches, in addition to the episcopal right in canon 1279, §4.

Assuming, moreover, that the bishop's intervention is related to the indulgence as such, it would still be our opinion that the erection is valid. In many canons we read that the consent of some superior is required, and occasionally it is stated that without this consent the act is invalid. Michiels, *De Personis,* p. 401: "Non raro in iure ad agendum requiritur altioris vcl alterius Superioris, puta Ordinarii loci vel Sedis Apostolicac, consensus. . . . Talis consensus, secus ac in can. 105 statuitur, per se non requiritur ad validitatem actus; regulariter nihil aliud est quam approbatio seu licentia praevia, ad solam liceitatem requisita . . .; ut talis consensus, si requiratur, habeatur ad actus validitatem necessarius, hoc explicite seu acquivalcnter ex ipsis canonis verbis est probandum; ita, v.g. in can. 1527, §r, ct 1550, §1, n. 3." This doctrine is fully supported by canon 1680, §1, for the episcopal licence is not normally an essential constituent of a papal grant of indulgences, and the text of the concession nowhere declares it to be necessary under pain of nullity. It is supported also from analogy with the rule in canon 1147, §3.

We are well aware that indulgences, and the faculties to grant them, arc not subject to any very stable rules. That the Ordinary's consent is necessary for the valid erection of an indulgenced mission cross might be argued from the wording of the decree, 13 August, 1913, which is the basis of *Preces et Pia Opera,* n. 588: "Ordinaria Episcoporum auctoritas et Apostolicac Sedis liberalitas ccnsucrunt iam pridem munere indulgentiarum esse ditandos qui pie se ad haec signa converterint;" Marc-Gcstermann discusses it under a section explanatory of the indulgences which may be granted by residential bishops.1 There would be nothing startling if the Ordinary's consent were required under pain of nullity; for example, before the rules about erecting

1 *Tbeol. Moralis,* II, §1727.

the Stations of the Cross were changed in 1938,[1] the Ordinary's intervention was necessary "sub poena nullitatis ".[2] We think, nevertheless, that in erecting a mission cross there is at least a *dubium iuris* on this point, which would be covered by canon 209.

## 717.— Ambo and Pulpit

*Is it permitted at the present day to erect an ambo, following the ancient model, in place of a pulpit? Also, what is the correct position for the pulpit?*

For the solemn announcing of the word of God during the liturgy, ancient churches had sometimes as many as three ambos (lecterns, reading-desks) as may still be seen in the Roman church of San Clemente. More commonly two were erected, on each side of the choir or sanctuary, one for the gospel, and the other for the epistle or lesson.

It is not in dispute that the use of these ambos is rightly continued in those churches which already have them, and the subdeacon, for example, in a solemn Mass, may continue to sing from an ambo, facing the people, instead of with his back to them. Thus, a modern writer on the ceremonial of a solemn Mass, after explaining the more modern procedure, gives alternative directions when the ambo is being used,[3] and replies concerning it are frequently found in the *Decreta Authentica* of the *Congregation of Rites,* one as recent as 20 May, 1900.[4] The custom is very common in Spanish churches.

Some reason for doubting the lawfulness of reviving the practice in modern churches is based on certain texts in *Caeremoniale Episcoporum,* the only current liturgical book mentioning ambos, texts which imply that the ambo is to be used only where it is customary: "si qui erunt", "ubi ita consuetum est", "si vero in ecclesia fuerint legilia vel ambones".[5] The question is examined very fully by Callewacrt, whose conclusion is that the erection and use of ambos is lawful, and is to be commended in collegiate and other churches where an understanding of Latin may be assumed.[6] The liturgical readings are obviously meant for the instruction of the faithful, and it is fitting that the reader should face his hearers.

It should also be noted that many famous modern churches have been provided with ambos, presumably with the fullest sanction of local ecclesiastical authority. They may be seen, for example, in the monastic church of Maria Laach, and in the basilica of Montmartre. Dom Roulin gives other examples and illustrations taken from smaller modern churches, but he rightly criticizes the erection of two ambos in a small church where solemn Mass is scarcely ever celebrated, particularly when, in addition to these two lecterns, a vast towering pulpit is also found.[7]

Unquestionably, the singing of the gospel and epistle from an ambo facing the people stresses the people's part in the liturgy, and it is for this

[1] Q. *3.3.
[2] *S.C. Indulg.,* 21 June, 1879, n. 445.
[3] Crocgacrt, *Caeremoniale,* I, p. 133.
[4] Nn. 9.2; 315x; 3160; 4057.3.
[6] I, xii, 18: II. viii, 40 and 45.
[•] *Collât. Brugen.,* 1925, p. 255.
[7] *Nos Eglises,* p. 504.

reason that some modern liturgical revivalists are so much in favour of its restoration. As so often happens, zeal is liable to run to excess and exaggeration. To us it seems rather futile to reintroduce a liturgical lectern which has, for the most part, lost its purpose, since the language of what is read from it is usually not understood. Exceptionally, even in modern times, this objection is not sustained, namely in churches designed for a collegiate body of clerics where a solemn Mass is the rule. In small parochial churches there is everything to be said for one ambo within the chancel on the gospel side, not for the singing of the gospel at Mass, but for use in preaching and giving out notices.

In the larger parochial churches and cathedrals a nave pulpit has become the rule, because the speaker's voice can be more easily heard than from the ancient chancel ambo. Its correct position is on the gospel side, firstly, because it is a development from the gospel ambo; secondly, because the speaker will be looking towards the sacrccl ministers seated on *sedilia* at the epistle side. In cathedrals, the epistle side is considered more correct, in order that the speaker may face the bishop seated at the throne. But there exists no absolutely strict law about its position, and some liturgists sanction a departure from the usual rule for any reasonable cause, for example, to secure an easier approach from the sacristy or if the acoustics of the building favour the position chosen.

## 718.—Mass Bell

*Are there any explicit directions about the si%e of the bell used at Low Mass, and the method of ringing it?*

*Rubricae Generales,* XX: . . . et ab eadem parte Epistolae paretur . . . parva campanula.

*Rit. Celebr. Miss.,* VII, 8: Cum dicit *Sanctus* . . . ministro interim parvam campanulam pulsante.

VIII, 6: Interim dum celebrans elevat Hostiam . . . minister manu dextera pulsat campanulam ter ad unamquamque elevationem, vel continuate quousque sacerdos deponat Hostiam super Corporale, ct similiter postmodum ad elevationem calicis.

5.R.C., 25 October, 1922, n. 4377: Insuper ad removendum, quantum fieri potest, inconveniens quo aliqui de longinquo vel de propinquo in templo sistunt sine attentione ac reverentia etiam ad praecipuas divinorum mysteriorum actiones, maxime expedit, ut paulo ante consecrationem aliquod campanulae detur signum, iuxta communem ecclesiarum praxim.

The preceding portion of 5.R.C., η. 4377, regulating the ringing of this bell also at sung Masses, mentioned the following reasons for the custom: "Christifidelium attentio, laetitia, devotio, fidei catholicae professio in veram ac realem lesu Christi praesentiam in SSma Eucharistia, corumque consociatio angelicis choris ad laudandum Deum et adorandum." Its purpose, as now understood, not being restricted to warning the faithful, the bell must be used at Masses, even in private oratories, at which none of the faithful is assisting, as directed by n. 3638.3.

The custom of ringing the large church bell at the elevation dates from about the twelfth century, and is considered to be connected with the desire

of the faithful to look upon the Host which began about that time. The rubrics quoted above first appeared in the Missal of Pius V, 1570, and a writer in *O.L.P., V,* 1920, p. 58, suggests that the Tridentine justification of private Masses was responsible for the introduction of the custom at these Masses.

In addition to the occasions mentioned in the rubrics and by *S.R.C.*, n. 4377, the practice is now almost universal of ringing the bell at the *Domine non sum dignus.* In many parts it is rung also at the beginning of Mass, and at the elevation preceding the *Pater Noster.*

Apart from the direction that the bell must be small, there are no directions as to its exact dimensions, and we think one measuring even eight inches in diameter would be within the rule. Rubricians favour a much smaller article, well made of silver or bronze, and containing only one tongue. Several bells within one dome are tolerated by many writers.

IP7w/ *mast be said of the practice of using a gong, instead of a little bell, seeing that the use of a gong is forbidden, S.R.C. 4000, n. y ?*

The question to which a negative answer was given by 5.R.C., 10 September, 1989, gave the following description of the gong: "Tandem loco tintinnabuli pro Sacrosancto Missae Sacrificio nonnullae Ecclesiae novissime coeperunt adhibere quoddam cymbalum *Indorum Orientalium,* quod est ad modum magni catini (bowl) semipendentis ab hasta lignea, ct percussum ab Acolytho sonum elicit." The question came from Mexico.

The correct kind of bell is a small hand-bell. It is forbidden to have a large gong, a tocsin that appears to have been in use amongst the Indians for summoning warriors to battle. Most of the authors, following this instruction, forbid all gongs, small as well as large, and there can be no doubt that in doing so, and in recommending a small bell, they are adhering to what is right and proper. But it is, we think, open to those who favour a gong-pattern of bell to argue that the instruction forbids a large size, and that a small one is not expressly forbidden. The only writer known to us who has been a bit merciful in discussing the gong is Augustine: "It was asked from a Mexican diocese whether, instead of the *tintinnabulum,* a cymbal or basin-like instrument appended on a shaft could be used, and the S. Congregation of Rites answered negatively. Whether this answer would forbid gongs appears doubtful."[1] Our answer to the question must be that the practice of using a small gong is incorrect but not clearly forbidden.

### **719.—** Sanctuary Carpet

*Is there a rule that the sanctuary carpet must be green?*

*Caerem. £>pp.,* I, xii, 16: Gradus omnes altaris inferiores cooperiantur aliquo amplo ct pulchro tapete, ut, si fieri potest, sint magis conspicui, ct ornati, quam reliqua pars presbyterii, quae pannis viridibus contegitur. Si vero tale tapete amplum haberi non posset, saltem scabellum, seu suppedaneum, quod est proximum altari, sit tapete aliquo coopertum.

The text directs a green carpet for the sanctuary, explained in n. 10 as

[1] *Liturgical Law,* p. 63.

covering the whole floor space "usque ad infimum gradum altaris". At least the footpace (predella, scabellum, suppedaneum) must have a carpet, and the writers usually recommend this to be green also, but there is no strict rule about it; in fact one could deduce from the text that the footpace carpet, which should be more conspicuous and ornate than the rest, should be of brighter colours. If the carpet has a pattern, neither sacred nor profane symbols should be used?

From the conclusion of Mass on Holy Thursday and for the whole of Good Friday there should be no carpet either on the sanctuary or on the footpace.

For Requiems *Caerem. Epp.,* II, xi, i, directs the footpace alone to have a carpet. This may be cither violet or black, but if the Blessed Sacrament is reserved on the altar black is not correct.

### 720.—National Flag in Sanctuary

*Are there any regulations on the subject of placing the national flag permanently in the sanctuary of a church during time of war?*

(i) Up to a few years ago the instructions of the Holy See permitted in churches only religious flags, and in the event of the emblems of anti-Catholic societies being introduced priests were directed to discontinue the function and withdraw.[2] The latter instruction is clearly much more than a positive law and is still in force, but the former has become considerably relaxed. In a reply sent to the Apostolic Delegate of the United States, 31 March, 19η,[3] the Holy Office decided that the national flag could be permitted during religious ceremonies and on the occasion of funerals, provided the church and the sacred liturgy suffered no disrespect. A similar reply from 5.R.C., 26 March, 1924, n. 4590, stressed the obligation, already contained in canon 1233, §2› °f excluding flags belonging to forbidden societies or containing anti-religious emblems, but permitted the introduction of those which were unobjectionable. In both of these instructions the Holy See had in mind the occasional presence of a flag during some ecclesiastical function at which it was considered appropriate.

(ii) But further considerations arise when it is proposed, for the duration of a war, to have the national flag on the sanctuary at all times and not merely on some special occasion. It might be difficult to remove it without giving offence; a precedent once established would tend to be repeated at all future times of national emergency, and it might happen that Catholics would not always find themselves completely in harmony with the national cause; it gives an appearance of nationalism to the Church which must be of its nature supranational. All these appear to us to be very good reasons for not starting the practice.

It is true that some French churches are accustomed to exhibit the tri-colour—not a pleasing practice in our opinion—though the Sacred Heart emblem upon it is held, no doubt, to be sufficient justification. In America, during the last war, the custom was apparently tolerated. It was held to be

[1] *Directions for Attar Societies,* p. 56; *Ephemerides Li/urgicae* (lus ct Praxis), 1940, p. 102.
[*] 5.R.C., 14 July, 1887, n. 3679.1.
[1] *Ecclesiastical Review,* 1918, LIX, p. 627.

quite unobjectionable in time of war, and that harm would be done by refusing: there is no principle involved and it is consonant with Catholic teaching to combine patriotism with religion.1 Certainly, there is no dear law forbidding it, and recent replies of the Holy Sec could be held to cover the situation. In American churches the display of the national colours is said to be still authorized.2

Since the practice is liable to cause some embarrassment for the reasons explained, we think that the proper answer to the above question is that the national flag should not appear habitually in our churches unless authorized by the Ordinary.

### 721.— Sacrarium

*If the church or sacristy possesses no "sacrarium", may one use for the purpose a selected spot in the garden? If so, could this spot correctly be used in disposing of the chalice ablutions of the first Mass, in the case of a priest who is celebrating a second time in another church?*

(i) If a church possesses no *sacrarium* it lacks something which the rubrics of the missal and the ritual direct one to use on various occasions. It is described in the Roman Pontifical, *Ordo ad Synodum, die tertia·*. "In sacristiis sive secretariis, aut iuxta altare maius sit locus praeparatus ad infundendam aquam ablutionis corporalium, ct vasorum sacrorum, ac manuum, postquam sanctum Chrisma aut oleum Catechumenorum vel Infirmorum tractaveritis." *Rituale Komanum,* using the word *sacrarium,* II, i, it, supposes that the baptistery has one distinct from that belonging to the church; the font is usually constructed in such a way that a divided portion is, in effect, the *sacrarium* of the baptistery.

Another text in the same book, Appendix *de SS. Eucharistia, S.R.C.,* 11 March, 1858, distinguishes between a *sacrarium* and a *piscina.* The writers we have consulted use the words indiscriminately. In our view, the difference can only be that the purpose of a *piscina* is served if liquid can be poured into it; many sanctuaries have a stone credence built into the wall, in the lower portion of which is a small aperture, with a pipe leading to the ground. But usually this aperture is far too small for the purposes of a *sacrarium,* namely, a depository for such things as ashes, including ashes of what were the sacred species in such contingencies as that mentioned in *De Defectibus,* x, 14. The opening, with its channel into the earth, should be sufficiently large to serve, on occasion, for the reception of solid matter, and Dom Roulin gives designs and useful suggestions in *Nos Eglises,* pp. 639-645.

If the church docs not possess one, it seems to us that the best thing to do, at least for liquids, is to use the baptistery *sacrarium.* We have not seen this suggested anywhere, but it seems obvious that if the baptismal water may be poured into the church *sacrarium,* as directed by *Rituale Romanum,* II, i, i T, there can be no serious objection to the process being, so to speak, reversed. If there is no *sacrarium,* cither in church or baptistery, the law can be sufficiently observed, pending the construction of one, by digging a cavity in the ground touching the wall of the church outside.

1 *Ecduiastical Review,* 1918, LIX, p. 421.
• *Homiletic Review,* May 1942, p. 7j6.

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(ii) The need of a *sacrarium* is most urgent in disposing fittingly of matter which is unusually sacred because of its contact with the Holy Eucharist, particularly the chalice ablutions of the first Mass when duplicating. Various alternatives are permitted by *S.R.C.,* 11 March, 1858, a text which has the added authority of inclusion in the *Rituale Romanum,* Appendix *de SS. Eucharistia.* ". . . aqua e calice demissa, pro rerum adiunctis, vel ad diem crastinum servetur (si nempe eo rursus Sacerdos redeat, Missam habiturus), ct in exequenda purificatione in calicem demittatur, vel gossypio aut stuppa absorpta comburatur, vel in sacrario, si sit, exsiccanda relinquatur, vel demittatur in piscinam". Failing a proper *sacrarium,* as described above, it may be sometimes necessary to dispose of other sacred remains in whatever way is convenient. But, in our view, this cannot be tolerated in the case of the chalice ablution, since the rubric directs other ways of disposing of it, and the priest should choose one of these ways if there is no proper *sacrarium* available. A further alternative is given in Jl R.C., 9 May, 1893, n. 3798.5: the ablution of the first Mass may be taken, in a clean vessel, to the place of the second Mass and consumed there with the ablutions. Cf. Q. 89.

### 722.— Monuments

*Is itforbidden to erect a mural tablet in a church to the memory ofa lately deceased pastori*

R.C., 20 October, 1922, n. 4376: Utrum in ecclesiis earumque cryptis divino cultui destinatis apponere liceat tabulas cum inscriptionibus et nominibus fidelium defunctorum quorum corpora inibi tumulata non sunt nec tumulari possunt juxta canoncm 1205, §2, Codicis Juris Canonici. *Resp.* Non licere, juxta alias resolutiones ct ad tramitem Decreti, n. 733, diei 2 Martii, 1641, ct canonis 1450, §2, n. 1, Codicis Juris Canonici.

Canon 1205, §2, enumerates the eminent persons whose bodies may lawfully be interred in churches. Canon 1450, §2, permits certain spiritual privileges to founders and benefactors of churches, amongst which is not found the right to a memorial tablet.

### 723.— Tombs in Churches

*Assuming that a body is lawfully entombed in a church, at a distance ofone metre from a portable altar, is the measurement to be madefrom the altar stonel*

Canon 1202, §2: Subtus altare nullum sit reconditum cadaver; cadavera autem quae prope altare sepulta forte sunt, distent ab eo saltem spatio unius metri; secus Missam in altari celebrare non licet, donec cadaver removeatur.

J.R.C., 25 October, 1942 (private); *Ephemerides Uturgicae* (Ius et Praxis), 1942, p. 52: Utrum, attento can. 1197 circa definitionem altaris mobilis seu portatilis, distantia unius metri inter sepulcra cadaverum et altare computanda sit: (ϛ) a petra sacra, (ά) an potius ab angulo mensae? *Resp.* Negative ad I. Affirmative ad II.

The above question arises only in cases where the altar near a projected tomb is portable in the liturgical sense. If the altar is fixed the distance ordered in canon 1202 is clear; but if it is portable there is some doubt

whether the distance must be reckoned from the small stone placed at the centre of the mensa.

The sources of canon 1202 arc carefully examined in *Ephemerides Ldturgicae,* 1928, p. 417, and the commentator concluded, from the various decrees on the subject, that in the case of a portable altar the distance was to be measured from the non-consecratcd supports of the *mensa,* and not from the small altar stone. This solution is confirmed by the reply of 25 October, 1942. A metre is slightly over thirty-nine inches.

## §9. CANDLES AND LIGHTING

### 724.—Electric Lighting: Roman Instruction

*Where is the* 1932 *instruction by the Cardinal Vicar of Rome to be found, and are the ndes therein applicable elsewhere?*

The instruction is not applicable elsewhere except in so far as it re-affirms what is already the common law. But it is a vaulable interpretation of the law, providing rules which could fittingly be observed elsewhere.

It appeared in *I'Osservatore Romano,* 19 March, 1952; *Documentation Catholique,* 193 2, XXVIII, p. 426. An English translation, *The Clergy Ret lew,* 1932, III, p. 428, by Rev. A. Bentley, Ph,D., M.A., is reprinted here.

"1. Only candles of wax of good quality may be used upon the altar. It is therefore absolutely prohibited to place there, at any point whatsoever, candles fitted with electric lamps, even if side by side with wax candles. This must be understood also of electric chandeliers, brackets or standards, near or above the altar, forming part of its decoration and completing its design. Standards or brackets, if altogether *separated* from the altar, may have electric 'candles', provided the lamps arc of limited power (5-j candle power).

2. It is likewise prohibited to set candles fitted with electric lamps in front of and around the throne for exposition of the Blessed Sacrament, even if the throne be detached or distant from the altar or against the wall; a practice adopted in some churches during the most solemn expositions.

5. Similarly, before sacred relics, even when placed below the altar, and before such sacred pictures or *sottoquadri,* as, with due authorization, are venerated upon the altar, electric candles or lamps may not be used, but only wax candles, or lamps with wicks; and the last should not be set upon the *mensa* of the altar.

4. The electric illumination of the interior of a ciborium, or of a throne or canopy for exposition cither of the Blessed Sacrament or of the sacred wood of the cross, is forbidden.

5. Away from the altar itself, electric lights of a power proportionate to the use they serve, in hanging lamps or on brackets, arc tolerated, provided that the lamps remain entirely hidden, and that in front of the altar where the Blessed Sacrament is reserved, or where sacred relics arc exposed, there is at least one oil lamp in a conspicuous position.

6. In front of sacred pictures placed above altars, even if separated from the altars, none but wax candles or oil lamps are allowed; but in front of

sacred pictures which, with due permission, are venerated apart from altars, it is tolerated that electric candles or lamps be set, with the special precautions and conditions indicated in the following paragraphs.

7. Crowns, garlands, diadems, frames, inscriptions, monograms, hearts, symbols, rays, stars, roses, lilies, flowers, or any other kind of decoration, made with electric filament or lamps, and set in any way whatsoever around sacred pictures or statues, arc prohibited, and must be removed forthwith, even if they arc placed against the walls of a chapel, or of a church or its annexes, or overhang or surround niches or shrines.

8. Automatic electrical illumination through the insertion of coins in a slot, and invitations by lamps or any other system whatever, are forbidden before all altars and sacred pictures or in any part of the church.

9. By preference, the ordinary internal lighting of the church should be effected by means of electric light from hidden sources; and the same method may be used with due caution to light up pictures or images with a soft and sufficient light. On occasions of greater solemnity an "extraordinary" illumination may be prepared with standards, brackets or chandeliers lit with electric 'candles', provided that their direction and position be determined in a manner perfectly corresponding to the artistic requirements, the nobility of sacred edifices and the dignity of sacred worship, with scrupulous care not to inflict damage on the walls, painting or marble; and provided that the power of the light be as low as possible.

10. We condemn and prohibit all illumination with a series of exposed lamps, fixed to rods of wood or iron, tracing architectural lines and motives in the interior of a church or an altar; as well as stars or other devices in place of electroliers.

11. When the external illumination of a church, on the occasion of some extraordinary solemnity, is carried out with cressets in accordance with Roman tradition, it must be arranged in such fashion that all danger of fire, or of discolouring the stone or walls through flames or oily substances, is avoided. If electric light be used, the preference should be given to reflected light; any plan to use strings of exposed lamps, fastened to wooden or metal rods, must be submitted to the diocesan commission for sacred art. For any illumination, superiors of churches must give formal guarantees about the safety of the bui ding.

12. An expert from the technical commission of our vicariate will check all electric fittings for lighting churches, chapels or oratories, and we ordain that from now onwards any project involving new equipment or renovation must previously receive the approval of the commission, to whom belongs the revision and approbation of the work when completed."

### 725.—Electric Light within Throne

*As I understand the regulations, it is forbidden to replace liturgical lights, such as the sanctuary lamp and candles during exposition, by the use of electricity. This is permitted only for purposes of illumination. Is it not, therefore, lawful to illuminate the interior of the exposition throne by concealed electric lighting if it is judged necessary for its proper visibility?*

The general principle is correctly stated, but there are certain reservations and exceptions. It is forbidden, for example, to place electric lamps on the

altar itself, or on the gradines, even when the proper kind of liturgical lighting is provided. What the law aims at avoiding is anything like theatrical effects in churches.

A number of previous decrees were summarized, 24 June, 1914, n. 4322: "Mens est: Sacra Rituum Congregatio hanc nacta occasionem, cum innotuerit nonnullis in locis tales abusus invaluisse, ut circa aediculas Sanctorum in pariete super altare positas, et vel in ipsis altaris gradibus ubi candelabra collocantur, parvae lampades electricae variis distincta coloribus disponantur—quod profecto minus convenit gravitati et dignitati sacrae liturgiaeet decori domus Dei—facto verbo cum Sanctissimo, etiam atque etiam Rmos Ordinarios in Domino hortatur ut pro sua religione invigilent, ne Sacrae Congregationis Decreta posthabeantur. . . . Summa autem Decretorum haec est: Lux electrica vetita est, non solum *una cum candelis* ex cera super altaria (4097), sed etiam loco candelarum vel lampadum, quae coram SsiTio vel Reliquiis Sanctorum praescriptae sunt. Pro aliis ecclesiae locis et ceteris casibus, illuminatio electrica, ad prudens Ordinarii iudicium permittitur, dummodo in omnibus servetur gravitas, quam sanctitas loci ct dignitas sacrae liturgiae postulant (3859, 4206 et 4210, ad 1). Nec licet, tempore expositionis privatae vel publicae, interiorem partem ciborii cum lampadibus electricis in ipsa parte interiori collocatis illuminare, ut SSma Eucharistia melius a fidelibus conspici possit (4275)/'

By "ciborium" is meant here, we think, the canopied throne on which the Blessed Sacrament is placed during exposition. This is, at least, the interpretation of the writers on the subject, and it is so stated in the instruction issued by the Cardinal Vicar for Roman churches, n. 2 and 4. It could be maintained that this instruction is for Rome only, not for other places, and that by "ciborium" in n. 4322 is meant the canopy or baldacchino over the whole altar. Even so, it seems evident from the wording of the decree—"ut melius a fidelibus conspici possit"—that electric light, if it is forbidden within the altar canopy, must *afortiori* be forbidden within the throne.

### **726.—** Candles

*What is the. minimum amount of beesn'ax tolerated in candles usedfor liturgical functions? Is it necessary that they should be blessed? In lighting them, is any order to be observed?*

(i) The decree d'.R.C., 14 December, 1904, n. 4147, settled this question for the common law of the Church in rather general terms: ". . . Episcopi pro viribus curent, ut cercus paschalis, cercus in aqua baptismal! immergendus, et duae candelae in Missis accendendae, sint ex cera apum, saltern in maxima parte; aliarum vero candelarum, quae supra altaribus ponendae sunt, materia in maiori vel notabili quantitate ex eadem cera sit oportet. Qua in re parochi aliique rectores Ecclesiarum ct Oratoriorum tuto stare poterunt normis a respectivis Ordinariis traditis, nec privati sacerdotes, Missam celebraturi, de qualitate candelarum anxie inquirere tenentur."

The common law, we believe, docs not determine exactly what proportion of beeswax is represented by such terms as *maxima, maiori, notabili parte.* This is left to the Ordinary to fix, and the English bishops have decided, for churches within their jurisdiction, that the paschal candle, the Mass candles (including the sixes) and the twelve necessary for Benediction or exposition

should contain 65 per cent.; all the others used on the altar must contain at least 25 per cent.[1]

In places where the bishops have not determined the exact proportion we would expect to find differences of opinion amongst the writers; "maxima parte" according to *Collationes Hrtgenses,* quoting *Rer/te Ecclesiastique de Mefy,* means 75 per cent.;[2] "maiori vel notabili parte" means "pars circiter media". A representative American liturgical writer suggests 67-75 per cent, as the meaning of "maxima" and 51 per cent, for "maiori vel notabili parte". In Holland the fixed proportion is 70 and 60 per cent, respectively.[3]

(ii) Apart from the obligation of blessing the candles in parish churches on Candlemas day, there is no strict obligation of blessing the candles used even at Mass, but it is right to do so and a formula exists in *Rituale Romanum,* VIII, iii.

(iii) 5.R.C., i February, 1907, η. 4198.9, gives the following directions: "Altaris cerei ita sunt accendendi, ut incipiatur ab illo, qui Cruci proximius repetitur, in cornu Epistolae, postea, servato ordine, reliqui duo in eodem cornu existentes; ac deinde accenduntur reliqui cerei in cornu Evangelii exstantes, incipiendo item ab eo, qui Cruci propior est, usque ad ultimum in eodem cornu oppositum. In extinguendis autem iisdem cereis ordo invertitur, atque incipitur in cornu Evangelii, a cereo, qui a Cruce remotior est, ad illum qui propior; dein vero a parte Epistolae, eadem regula eodemque ordine servato."

(iv) *S.R.C.,* 13 March, 1942, permitted considerable modifications of the common law, owing to the present conditions, subject to the Ordinary's sanction. Substitutes arc permitted both for wax candles and for olive oil:

"Sacra Rituum Congregatio, quoties ci contigit cavere de lampade quae ante Ssmum Sacramentum indesinenter lucere debet, semper abstinuit a concedendo per generale indultum usu lucis electricae, iugiter insistens traditional! legi de usu cerae apum et olei olivarum et non exclusis, in casu necessitatis, aliis oleis (Decret. N. 4534): idque ut nostrae fidei et caritatis symbolica significatio servetur et, iuxta indolem cultus, visibilis materiae destructio. Porro haec S. Rituum Congregatio summam decretorum circa usum lucis electricae praebuit Decreto N. 4322 dici 24 lunii, 1914. At biennio post, id belli europaci conditionibus exquirentibus, et instantiis plurimorum Ordinariorum morem gerens, per Decretum N. 4334 diei 23 Februarii, 1916, indultum temporaneum concessit quo, pro lampade Ssmi Sacramenti, ultimo loco adhiberi posset etiam lux electrica.

lamvero nunc, praesenti bello perdurante atque redeuntibus iisdem adiunctis, haec S. Congregatio, auctoritate Summi Pontificis, derogans praescripto canonis 1271 C. 1. C. et *Ritualis Romani,* tit. IV, c. I, n. 6, necnon huius S. Congregationis Decretis, inhaerens vero Decreto N. 4334 diei 23 Februarii, 1916, rursus remittit Ordinariorum prudentiae ut, peculiaribus huius belli circumstantiis sive ordinariis sive extraordinariis perdurantibus, ubicumque oleum olivarum vel cera apum vel penitus deficiant vel sine gravi incommodo et dispendio haberi nequeant, ibi lampas Ssmi Sacramenti aliis oleis, quantum fieri potest vegetabilibus, nutriri possit, ultimo autem loco etiam lux electrica adhibeatur.

Item Ordinariorum prudentiae remittit, ut, praesentis belli supradictis

[1] 4 December, 1906; cf. Fortescuc-O'Conncll, *Ceremonies of the Roman Rite,* p. 7.
[2] *Collât. Rn/gen.,* 1905, p. 599.
[3] *N.K.S.,* December 1934, p. 559.

adiunctis perdurantibus, in defectu cerae apum, reducatur numerus candelarum pro singulis sacris functionibus rite praescriptus, et huic deficientiae cereorum sufficiantur usque ad numerum requisitum candelarum alia lumina, etiam electrica. Contrariis non obstantibus quibuscumque."

## 727.—Paschal Candle

*During whatfunctions ofpaschal time is the paschal candle to be lighted?*

Apart from the rubric in the missal directing the candle to be extinguished after the gospel on Ascension day, the only liturgical book which gives more explicit directions is, so far as we can discover, the *Memoriale Rituum* for use in the smaller parish churches. The most recent edition of the book, which may be obtained in an English version,[1] gives under VI, ii, §7, n. 6 the following instruction: . . it is lighted at sung Masses and Vespers (or low Masses, which are read in place of solemn Masses) on the three more solemn days of the Easter octave,[2] on Low Saturday, on all Sundays (and if it be the custom, also on other days and solemnities) of paschal tide, until the gospel on Ascension day inclusive". This rubric incorporates 5.R..C., 19 May, 1607, n. 235.it .

In so far as liturgical rules can be reduced to a principle, it is apparent firstly that the lighting of the paschal candle accompanies the more solemn liturgical functions of Mass and Vespers on certain days during paschal time. From J.R.C., n. 3479, it is not, accordingly, lighted during Benediction on these days; but this rule was later interpreted to mean that the candle need not be extinguished when Benediction follows any of these functions, and that it is lighted during these functions *coram Ssmo Sacramento Exposito.*[3]

Secondly, the days on which its lighting is obligatory during the functions mentioned above arc Monday, Tuesday and Saturday in Easter week; also all Sundays (including any holy days of obligation which may occur, according to the rubric n. 5 in the previous edition of the *Memoriale Rituum).* In addition, local custom may require it to be lighted, during these functions, on other days and solemnities during paschal time.

From these rules certain practical deductions are correctly made, in our view, by various writers. It is not lighted when black or violet vestments arc worn, even during solemn functions;[4]*it is lighted during the principal low Mass, on the prescribed days, in churches or convent chapels where Mass is not sung.[6] For the rest, as is evident from the quoted texts, local custom may always be followed in lighting the paschal candle on days other than those prescribed by the common liturgical law. Thus, from *S.R.C.,* n. 3697.11, the custom of lighting it during a conventual Mass "dierum non festivorum" may be followed.

## 728.—Sanctus Candle

*Granted that the Holy See has sanctioned the non-observance of the rubric, are* or *io hold that, owing to the contrary custom, it is now wrong or incorrect to observe the rubric?*

[1] Edited by Rev. L. Λ. Clark, 1926, Bums Oates & Washboumc.
[2] Easter Sunday, Monday and Tuesday.
[3] 15 April, 1923, n. 4383.
[4] Cf. e.g. Westminster *Ordo,* 1948, p. j8.
[5] Cf. *I'Ami du Clergé,* 191r, p. 656; *Eederiastica! Review,* 1904, XXXI, p. 64.

*Rubricae Generales,* xx: . . . ab eadem parte epistolae paretur cereus ad elevationem sacramenti accendendus.

Rz7. *Celebr. Miss.,* viii, 6: Interim dum celebrans elevat Hostiam, accenso prius intorticio (quod non exstinguitur, nisi postquam sacerdos Sanguinem sumpserit, vel alios communicaverit, si qui erunt communicandi in Missa)....

j.R.C., 9 January, 1899, n. 4029.2: Utrum alia consuetudo servari possit non accendendi tertium cereum in Missis lectis a consecratione ad consummationem? *Resp.* Affirmative.

*Ibid.,* 29 July, 1904, η. 4141.6: Num Ordinarius praecipere possit, ut Sacerdotes, tam Sacculares quam Regulares, in Missis lectis tertium cereum accendant in Canone apud eam Dioccesim, ubi sicut in universa regione mos illum accendendi in oblivionem ac desuetudinem iamdudum abierit? *Resp.* Affirmative, ex Rubrica Generali Missalis, tit. xx, et accedente auctoritate Ordinarii, non obstat decretum, n. 4029.

Canon 2: Codex, plerumque, nihil decernit de ritibus ... in celebratione sacrosancti Missae sacrificii. . . . Quare omnes liturgicac leges vim suam retinent, nisi earum aliqua in Codice expresse corrigatur.

Canon 5: . . . aliae (consuetudines) quae quidem centenariae sint et immemorabiles, tolerari poterunt, si Ordinarii pro locorum ac personarum diunctis existiment eas prudenter submoveri non posse. . . .

(i) The candle in question is usually contained in a bracket on the epistle side of the altar, or it may be placed on the altar steps. It docs for the low Mass what the two torches do for the sung Mass, and it is incorrect to light tliis third candle at sung Masses in addition to the two torches. The rubric had fallen into disuse even in the time of St Alphonsus: cf. *Theol. Moralis,* VI, n. 304; but it still remains in the current *editio typica* of the missal.

(ii) It is quite clear, from J'.R.C., n. 4141, that the local Ordinary may, if he secs fit, restore the observance of the rubric, deciding, in accordance with the terms of canon 5, that the contrary custom can prudently be suppressed. But, if there is no action of this kind on the part of the local Ordinary, our non-observance of the rubric may be continued, both from the general principles on "custom", and from j'.R.C., n. 4029.

(iii) Though there may be no directions from the local Ordinary, the rector of a church may lawfully restore the observance of this rubric, even though it has fallen into disuse everywhere else in the district, and many commentators hold that it is praiseworthy to do so, since it is a mark of honour to the Holy Eucharist. A full explanation of this subject is in *l' Ami du Clergé,* 1938, p. 444, the writer of which is in agreement with the above solution.

## 729.—Low Mass Candles

IPTw/ *is the correct position for the two candles at low Mass? Is it necessary to place theta at the extreme ends of the altar or gradine, and may they be moved, if necessary, in order to enable the celebrant to read the missal?*

The directions are contained in *Rabricae Generales,* xx: "Super altare collocetur crux in medio, et candelabra saltem duo cum candelis accensis hinc et inde in utroque eius latere." *Caerem. Epp.,* I, xii, n, assigning the

place for the six candlesticks in episcopal functions, reads "super planicie altaris" for the "super altare" of the rubrics of the Missal. .Many altars, like that in the Sistine chapel, have a step—*gradus*—gradine, an object of extreme dislike on the part of some liturgists. The candlesticks may be placed on this gradine according to T.R.C., n. 3759.2: "An in celebratione .Missae lectae, sive privatae, duo candelabra cum candelis accensis poni debeant super mensam altaris; vel locari possint etiam super gradum superiorem (vulgo scaffale) eiusdem? Negative ad primam partem; Affirmative ad secundam." From n. 3137.1 it is forbidden to have the Mass candlesticks fixed to the wall on either side.

These are the only directions concerning the position of the Mass candlesticks that we are able to discover. Provided they arc on each side of the crucifix, and in line with it, whether on the mensa or on the gradine, they may be placed either at the extreme end or between the sixes. It is, we think, customary to place them between the two end sixes.

If further light is necessary for reading the missal, an additional candle may be used, provided the candlestick docs not resemble the episcopal *palmatoria.* An oil lamp is forbidden.

### 730.—Candles on Side Altars

*Is there any law which directs or implies that, during exposition of the Blessed Sacrament, candles at a side altar must be extinguished?*

(i) The custom of extinguishing them, for example when May devotions at the Lady Altar are followed by Benediction, is widely spread, and it was our impression that there was a law to that effect. But on examining all the sources at our disposal, we can discover no rule of the common law which expressly requires these candles to be extinguished.*

(ii) It could be maintained, with plausibility, that the rule of extinguishing them is implied, at least, in the general terms of the *Clementine Instruction* which, in many sections, safeguards the attention of the worshippers from being distracted from the central object of their worship. It is true, indeed, that this instruction for the XL Hours provides a norm for shorter expositions in many points, but section 3, which directs images near the altar of exposition to be veiled, certainly does not apply to functions other than the XL Hours, and the official commentator has much to say against the rigid observance of this rule,[2] even during the XL Hours. Devotion to Our Lord in the Holy Eucharist does not exclude Our Lady and the saints, and we are not only accustomed, but ordered on occasion, to say prayers to them before the Blessed Sacrament exposed. It is the view of many that the origins of Benediction are closely allied to Marial devotions.[3]

(iii) What the common law leaves undetermined, local law may make more precise. But we can find no express rule requiring the extinguishing of candles at other altars in the collections of local laws at our disposal; if any direction of this kind exists it must be obeyed in the locality to which it applies. The directions issued for Cardiff and Mencvia in 1945 include the

1 Cf. *l'Ami du Clergé,* 1909, p. 96; 1914, p. 816.
1 Cf. *Decreta Authentica,* IV, pp. io, 11, U9-
* Cf. Q. 169.

following, n. 100: ". . . any great quantity of candles blazing at a shrine so situated as to cause distraction, whether such a shrine is within the sanctuary rails or not, is to be extinguished". This seems to us an excellent interpretation of the common law.

Until better instructed, accordingly, it is our opinion that, provided the number of candles is not so excessive as to distract attention from the altar of exposition, there is no obligation to extinguish them during Benediction, unless local law so directs.

## 731.— St Blaise Candles

*Where is the text to befoundfor giving this blessing? What is the origin of tht rite?*

The older forms and ceremonies connected with giving this blessing are now abrogated. It must now be given, with unlighted candles, according to the text of the blessing and formula found amongst the "Benedictiones non reservatae", n. 7, in the current Roman Ritual.

The Acts of the martyr are not authentic, but it appears from all the traditional accounts that he was Bishop of Sebaste in Armenia and was martyred at the beginning of the fourth century. He is said to have been a physician, and many cures, particularly of throat maladies, were attributed to his intercession. Undoubtedly he was extremely popular in the Middle Ages, as the liturgical blessing associated with his veneration bears witness.

*Should the candles used, which are already blessed the previous day, be blessed again with theform in the Ritual?*

5.R.C., i February, 1924, n. 4387.2: In ... n. 3196, *Vercellen,* 20 March, 1869, legitur pro benedictione gutturis in festo S. Blasii Ep. et Mart, adhiberi candelas in festo Purificationis B.M.V. benedictas et formulam: "Per intercessionem B. Blasii liberet te Deus a malo gutturis, Arnen." Quum vero alia formula, tum pro benedictione candelarum in festo S. Blasii, tum pro carum appositione sub mento gutturi singulorum qui benedicendi sunt, prostet in Rituali Romano (edit, typ.), quaeritur: An responsum in una *Vercellen.* valeat adhuc. . . . *Resp.* Adhibeatur ubique Oratio et formula Ritualis Romani.

(i) The rite of blessing the faithful with candles previously blessed on 2 February, and with the short formula given above, is no longer the correct one to be used on the feast of St Blaise. In days when the rite, now supplanted, was in use, the candles already blessed the previous day were not blessed again on 3 February, the feast of St Blaise.

The correct rite is now clearly indicated in n. 4387. If the faithful desire this blessing, the formula of blessing the candles, and the formula when placing them on the throat, arc those now given in the *Rituale Romanum* (ed. 1925) in the Appendix "Benedictiones non reservatae", n. 7.

(ii) The *Rituale Romanum,* previous to the current 1925 typical edition, directed the candles to be lighted when they were applied to the throat. The words are omitted in the current typical edition, which is the only authorita-

live text for present use. ^.R.C., 16 January, 1936, declared that the word *accensis* was purposely omitted; on 3 March, 1936, a plain negative was given to the question: Estne danda haec benedictio semper candelis accensis? The same reply stated that the blessing could be given on the Sunday following the feast of St Blaise for the convenience of the faithful, on analogy with n. 4373, which permitted this practice with blessed ashes on the first Sunday of Lent; the blessing, it is also explained, may be given at any time during the day. The text of both replies is given in *Ephemerides Eiturgicae* (lus et Praxis), 1937, p. 65 and p. 130.

### 732.— Requiem Mass Candles

*Is it lawful to have more than two candles on the altar during a Requiem "praesente cadavere, sine cantsi"?*

In principle this Mass should always be sung.1 In England and other places permission has been obtained for a low Mass on this occasion "ob Sacerdotum inopiam".2 In addition a low Mass is now lawful everywhere "pro pauperibus".3 We will suppose, therefore, that the celebration in question is a low Mass for a lawful reason. The rule limiting the number of candles to two for low Masses admits of an exception in the case of those which are not strictly *Missae Privatae, e.g.* "quoad Missas quae celebrantur loco solemnis atque cantatae";4 an example of such an exception is certainly the low Mass celebrated according to the *Memoriale Rituum* in small churches during Holy Week. In our opinion, a low Mass of Requiem *praesente cadavere* is also an example. In Masses *loco Missae solemnis* the correct number of candles, according to Many, is four.6

*Is it obligatory to use unbleached candles at a funeral Mass "praesente cadavere"? If so, where is the regulation to be found?*

The authentic decrees of the *Congregation of* R *lies* contain nothing on the point, so far as we can discover. The only liturgical text of which we are aware is *Caeremonialc Episcoporum,* which in Lib. II, cap. x, n. 4, and cap. xi, n. i and n. 7, prescribes candles "ex cera communi", by which is meant unbleached wax, at the office and Mass for the dead. Liturgical writers do not usually regard this rule as gravely binding, but it should be observed particularly if it is customary in a district. "Notatu dignum est rubricas petere ut, quantum fieri potest, in ritibus pro defunctis non adhibeatur cera alba, sed cera non purgata seu communis, quae coloris subflavii solet esse."6

1 *RiUiate Romanum,* VI. iii, 6.
3 7 March, 1847; *II " li'istm.,* p. 85.
8 *Addit, et* I *rariat.,* Ill, n. 4.
* J.R.C., 3059.7.
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# I. CODE INDEX


| Canon | Question |
|---|---|
| | 3'I |
| | 278 |
| | 164, 310 |
| | 3'5, 320, 728 |
| 6 | '40, 285, 301, 317 |
| | 434 |
| 10 | 293, 327, 439 |
| | 523 |
| 12 | 95 |
| | 5''» 500, 590 |
| 14 | 97, 566 |
| | 302. 303, 462 |
| 16 | 20, 275 |
| | 205, 292, 531 |
| 18 | 99. '90, 433 |
| »9 | 309 |
| 20 | '9'. 3°'. 569 |
| 21 | 5'9 |
| 22 | 64 |
| 24 | 64 |
| | 436 |
| 28 | 104 |
| 3° | 3'5 |
| | 440 |
| 33 | 99» '40, 440, 514 |
| 34 | 45' |
| 38 | 294, 330 |
| 39 | 286 |
| 43 | 285, 495 |
| 44 | 285, 303. 495 |
| 49 | 292 |
| 61 | 488, 493 |
| | 322 |
| 66 | 234 |
| | 23'» 443 |
| | 262 |
| | 485, 493 |
| 76 | 286 |
| 80 | 478 |
| 81 | 22, 298, 339, 59J |
| | 303 |
| 84 | 283, 288, 479 |
| 86 | 286 |
| 87 | 300, 437 |
| 88 | 9, 10, 205, 216 |
| 90 | 32 |
| 9' | 3'3, 329 |
| 92 | 442, 497» 5'', 59° |
| 93 | 442 |
| 94 | 261, 329 |
| 95 | 324. 442 |
| 105 | 435 |
| 106 | 526 |
| | 261, 565 |
| | 504 |
| 126 | 503 |
| 128 | 50' |

| Canon | Question |
|---|---|
| '30 | So? |
| '3' | 5°3 |
| '33 | 513 |
| '35 | 594 |
| 156 | 515 |
| '38 | 516 |
| '39 | 325 |
| 196 | 234 |
| 198 | 214. 488 |
| '99 | '9» 234, 305, 507, 705 |
| 200 | 190 |
| 207 | 45', 493 |
| 209 | 193» '94, '95, 198, 207, 287, 302, 3°6, 3°7> 449 |
| 211 | 261 |
| 212 | 261 |
| 216 | 509, 435 |
| 259 | 233» 234 |
| 247 | 336 |
| 291 | 565 |
| | 298 |
| 534 | 49' |
| 335 | 64, 434, 49' |
| 357 | 486 |
| 359 | 7', 72, 76, 98, 2J7 |
| 349 | 233, 254 |
| 368 | 234 |
| 406 | 509 |
| 409 | 507 |
| 4'' | 554 |
| 4'3 | 508 |
| 4'5 | 525 |
| 432 | 494 |
| 449 | 526 |
| 45' | 74. 188, 287, 309, 447, 491, 496, 527 |
| 461 | 527 |
| 462 | '63, 347 |
| 463 | 536 |
| 464 | 188, 254 |
| 465 | 506 |
| 466 | 72, 75, 76, 257, 520 |
| 467 | 9', 94» 96, 248, J2I |
| 468 | 160, 166, 239, 247, 248, 255 |
| 470 | 3'» 33, 38, 267 |
| 47' | 527 |
| 472 | 306, 54' |
| 474 | 75. 3θ6 |
| 476 | 305. 568, 478 |
| 478 | 527 |
| 505 | 55' |
| 5'4 | '89, 2O5. 254 |
| 521 | '99. 200, 201 |
| 522 | 203, 2°4. 556 |
| 523 | 20}, 556 |
| 524 | 546, 557 |


' '~358: " *Sacraments'')*

# CODE INDEX


| Canon | Quation |
|---|---|
| | ’99, 557 |
| 53« | 544 |
| 542 | 545. 549 |
| 544 | 549 |
| 552 | 546 |
| 576 | 547 |
| 59° | 5°5 |
| 593 | 554 |
| 600 | 555 |
| 606 | 562 |
| 610 | 576 |
| 611 | 553 |
| | 561 |
| 621 | 545 |
| 637 | 261, 548 |
| 641 | 261, 564 |
| 642 | 261, 548, 562, 565 |
| 647 | 261 |
| 648 | 261 |
| <>73 | 90 |
| 678 | 565 |
| 691 | 543 |
| 692 | 232 |
| 696 | 232 |
| | 370 |
| 729 | 535 |
| 75° | 696, 701 |
| 75’ | 20, 133, 225 |
| 753 | 5’5 |
| 736 | 53<> |
| 738 | ’5 |
| 741 | ’74. 547 |
| 743 | 12 |
| 744 | 9. ’5. 445 |
| 745 | 9. ’’. ’7 |
| 746 | 385 z |
| 747 | 12, 386 |
| 748 | 12 |
| 750 | 361 |
| 75’ | 9 |
| 752 | 9. ’O, ’’, ’4 |
| 757 | I |
| 759 | I, 6 |
| 760 | 5, 6, 9 |
| 762 | 26, 29 |
| 765 | 9 |
| 764 | 25 |
| 765 | 25, 26, 27, 28, 29, 316 |
| 766 | 27 |
| 769 | 29 |
| 770 | I I |
| 774 | ’5 |
| 777 | 3’. 35 |
| 778 | 32› 33 |
| 779 | 34 |
| 782 | 452 |
| 788 | 37 |
| 789 | 36 |
| 798 | 38 |
| 804 | 84 |
| 806 | 84, 85, 86, 87, 88 |
| 807 | 226 |

| Canon | Question |
|---|---|
| 810 | 570 |
| 8’3 | 107, ïo 8 |
| 814 | 4’ |
| 8’5 | 39 |
| 816 | 43 |
| 818 | 126 |
| 821 | 44°. 520 |
| 822 | 93. 94. ’58, 356, 687 |
| 823 | 686 |
| 824 | 7’. 80, 83 |
| 825 | 71. 81 |
| 828 | 81 |
| 829 | 80 |
| 830 | 79 |
| 83’ | 82 |
| 852 | 79 |
| 834 | 78 |
| 855 | 78 |
| 845 | I’8. 174. 547 |
| 846 | 127 |
| 850 | 163 |
| 855 | 367 |
| 856 | 225, 226 |
| 857 | ’52 |
| 858 | 146, 147, 148, 149, 150, 155, 439 |
| 859 | 91, 164, 165, 166, 168, 22$ |
| 863 | 122, 127 |
| 864 | 161, 162, 163 |
| 866 | 43 |
| 867 | 128, 131, 152, xji |
| 868 | 154, ’55 |
| 869 | 122, 127, 131, 158 |
| 872 | 198 |
| 873 | 188, 506, 446 |
| 874 | ’89. 45C. 45’ |
| 875 | 189 |
| 876 | 202 |
| 881 | xSS, 194, 446, 447 |
| 882 | 192, 193, 202, 655 |
| 883 | 53, 189, 190, 191, 212 |
| 885 | 215, 349 |
| 889 | 218 |
| 892 | ’95 |
| 893 | 212 |
| 899 | ’88, 457 |
| 900 | 2x3. 446, 457 |
| 901 | 161, 225 |
| 906 | 225 |
| 910 | 203, 204 |
| 9’4 | 239 |
| 9’5 | 259 |
| 9’8 | 657 |
| 928 | 245 |
| 929 | 227, 246 |
| 93’ | 22S, 229 |
| 933 | 228, 244 |
| 954 | 102, 242, 245, 607, 64I |
| 935 | 5’4 |
| 940 | 255 |
| 94’ | 242 |
| 95’ | 256 |

# CODE INDEX


| *Canûfj* | *Question* |
|---|---|
| 955 | 497 |
| 956 | 497. 5J2 |
| 964 | 552 |
| 975 | 499 |
| 978 | 498 |
| 980 | 565 |
| 984 | 345 |
| 985 | 459. |
| 990 | 459 |
| 1006 | 257. 259 |
| 1015 | 334 |
| 1014 | 293, 328 |
| 1015 | 335. 345 |
| 1017 | 264, 263, 280 |
| 1019 | 267, 337 |
| IO2I | |
| IO23 | 267, 270, |
| **IO28** | 270 |
| IO29 | 266, 267 |
| **IO3I** | 270, 287 |
| **IO32** | |
| **IO33** | |
| **IO??** | 287 |
| **IO38** | 276. 3»2 |
| **IO39** | 297 |
| **IO4I** | 3>7 |
| **IO42** | 282 |
| IO43 | 285, 287 296, 303 |
| :o44 | 287, 290, 296 |
| 1045 | 287. 288, 289, 290, 296 |
| 1046 | 287 |
| 1047 | 287 |
| 1051 | 480 |
| 1053 | 281, 301 |
| 1054 | 282 |
| 1060 | 294. 299 |
| 1061 | 295. 296, 297, 298 299 |
| 1062 | 297 |
| 1063 | 342 |
| 1064 | 297 |
| 1066 | 271. 275. 300 |
| 1069 | 337 |
| 1070 | 276, 291, 292, 293. 328 |
| 1071 | 294 |
| 1075 | 280 |
| 1081 | 272, 274. |
| 1084 | 273 |
| 1086 | 274 |
| 1089 | 344 |
| 1091 | 344 |
| 1094 | 287. 310 |
| 1095 | 307. |
| 1096 | 305, 307. |
| 1097 | 266, 314 |
| 1098 | 287, 29°, 309. 357 |
| 1099 | 29>. 292, 308, |
| 1101 | 320, 321, 328, 461 |
| 1102 | 300. 320 |
| I 103 | 33, 267, 326, 353 |
| 1104 | 337 |
| 1108 | 317. 320, J2>. 323 |
| i IB3 | 96 |

| *Canon* | *Question* |
|---|---|
| | 345, 480 |
| 1116 | 480 |
| 1118 | 334, 335 |
| 1119 | 335 |
| 1120 | 335 |
| | 327 |
| 1134 | 327. 328 |
| >>35 | 327» 333 |
| | 333 |
| 1137 | 333. 461 |
| 1138 | 33° |
| 1143 | 320, |
| 1145 | 346 |
| 1147 | 347, 355. 702, 703. 7>i> |
| 1148 | 346, 348. 35° |
| 1149 | 316, 352. 353 |
| 1164 | 684 |
| 1163 | 680, 681 |
| 1168 | 61 |
| 1169 | 357 |
| | 622 |
| 1174 | 682 |
| >>77 | 682 |
| 1178 | 688 |
| 1184 | |
| 1188 | 9°. 9>. 4<»5 |
| 1195 | 92 |
| 1196 | 61, 356 |
| 1198 | 654, 655 |
| 1200 | 653, 681 |
| 120T | 652 |
| 1202 | 723 |
| 120j | 621 |
| 1206 | 620, 621, 622 |
| 1215 | 612, 613 |
| 1239 | |
| 1240 | 341, 619 |
| 1245 | 476, 477. 478, 479 |
| | 72, 97» 98, 237 |
| 1248 | 95. 467. 468, 469 |
| 1249 | 91. 94, 46J |
| 1250 | 474 |
| 1256 | 567 |
| 1258 | 373» 375 |
| 1262 | >34» >35 |
| 1265 | 178 |
| 1268 | 663 |
| 1269 | 659, 665 |
| 1270 | 697 |
| | 45 |
| >274 | >74. 175. 17C >77. >78, >79, |
| >275 | >82, ‘83 |
| 1277 | 693 |
| >279 | 355. 689, 690, 716 |
| 1281 | 689 |
| 1300 | >99 |
| >304 | 702 |
| >305 | 696, 701 |
| 1306 | 119. 700 |
| 1307 | >6, 550 |
| 1308 | 55° |


337

# CODE INDEX


| Canon | Question |
|---|---|
| 1309 | 550 |
| OB | 3°3 |
| ’333 | 52’ |
| 1342 | 347 |
| ’344 | 65, 66, 521 |
| ’345 | 66 |
| ’546 | 9’ |
| ’349 | |
| 1568 | 188 |
| 1372 | 96 |
| ’374 | 367 |
| 1386 | 506 |
| 1410 | 265, 533 |
| 141 I | 53’. 532 |
| ’4’5 | 53’ |
| ’427 | |
| ’43’ | 534 |
| ’454 | 534 |
| 1435 | 55’. 534 |
| ’443 | 525 |
| ’444 | 523. 524 |
| ’475 | 532 |
| ’475 | |
| 1477 | 532 |
| 1481 | 54’ |
| 1496 | 538 |
| 1502 | 530 |
| ’503 | 538 543 |
| 1504 | 559 |
| 1507 | |
| ’532 | 652 |
| ’555 | 265 |
| 1622 | 5’8 |
| 1657 | 359 |
| 165 S | 339 |
| 1680 | 435. 716 |
| 1813 | 8 |
| i960 | 3’2 |
| ’97’ | 340 |
| 1988 | 267 |
| 1990 | 533. 538, 340 |

| Canon | Quettion |
|---|---|
| 2182 | 248 |
| 2200 | 462 |
| 2202 | 223 |
| 2209 | 211, 460 |
| 2219 | |
| 2220 | |
| 2229 | |
| 2230 | 216, 462 |
| 2231 | 460 |
| 2232 | |
| 2242 | |
| 2245 | 207, 209, 2I4 |
| 2247 | 207, 213 |
| 22 51 | 209, 210, 456 |
| 2252 | I95, 208, 209 |
| 2253 | ’9. 214 |
| 2254 | 197, 206, 213, 517 |
| 2258 | 365 |
| 2259 | 457 |
| 2260 | 352 |
| 2261 | ’97 |
| 2262 | 54 |
| 2275 | 352 |
| 2284 | ’97 |
| 2291 | 461 |
| 2292 | 352, 353 |
| 2294 | 34’ |
| 25’4 | 9, 20, 21, 22, 210, 225 |
| 2516 | 342, 460 |
| 2319 | 208, 542, 362, 366, 365 |
| 2342 | 555 |
| 2343 | |
| 2349 | |
| 2350 | 211. 459 |
| 2557 | |
| 2365 | 464 |
| 2369 | 218 |
| 2375 | 504, 352 |
| 2592 | 555 |
| 24’4 | 202 |

# II. ALPHABETICAL INDEX

*(References Io QQ.)*


*A Cunctis* (Breviarv) .. 585
*A Cunctis* (Mass):
alternative .. 63
founder's name .. .. 61
titular .. 61
A.P.F. indulgences .. .. 232
Ablution, Eucharistie Fast '45
Mass .. 44
Holy Communion .. 126
Abortion:
censure .. 459
co-operation .. 388
English law .. 389
indirect .. 386
therapeutic .. 387
Absolution, form .. .. 215
general, q.v.
Abstinence .. 474» 475
dispensation .. .. 476
Accession .. .. 426
Adopted children .. .. 3'
Advocates .. .. 359
Aeroplanes, confession .. .. 191
Agnus Dei .. .. 651
Air raid:
Extreme Unction .. .. 255
Prayer during .. .. 571
Alb, ornamented .. .. 7''
blessing .. .. 702
All Souls' Day:
indulgence .. 246
nuptial blessing .. 323
Altar:
erection .. .. 652
petitions upon .. 677
portable q.v.
position .. 653
privileged .. 2?8, 657
of Repose .. .. 602
stone 054,65$
Altar linen:
touching .. ''9
washing .. .. 674
Ambo .. 7
*Angusfia loci* .. .. 284
Animals' rights .. 452
Anniversary: Ordination .. 202
Antimensium .. 655
Antipendium .. 675
Antiphon B.V.M.: breviary 584
Army chaplains:
civilians' confessions 195» 196
*Missa pro populo* .. 74
parochial clergy .. .. 447
Ordinary .. .. 497
Vicar-General .. 496
Are, Curé of.. .. 529
Artificial Insemination .. 404
Ashes .. 649
Asperges:
method .. 58
*Miserere* .. 635
oratories .. 59
Requiem .. 60
Atomic bomb .. 399
*Andiio capitn!o,* etc. .. 435

Banns 267, 270
Baptism:
adult .. U
ceremonies 4» 5» 7
certificate .. .. 207
children of infidels .. 30ı
conditional 6, is
doubtful .. .. 293
dispositions IO, II
embryo .. 12
*in Ecclesia Catholica* .. 2Ç2
infant form .. 445
form .. 2
name 8
parental right .. '7
parochial right .. .. 15
procedure chart .. 9
refusal .. 3^2
sponsor, q.v.
vows .. 16
water I
Baptistery 714, 715
Basilica minor .. 679
Beard .. 5'5
*Beatus,* statue of .. 695
Bells:
belfry .. 357
gong ..... .. 7'8
Mass .. 7'8
Benediction of Blessed Sacrament:
assisting priest .. '73
camp Benediction .. 178
cross sign .. .. 170
crucifix during Benediction .. 671
number of worshippers .. .. 177
origins 169
repeated .. .. 176
Benefices:
manual .. 534
notion .. 55'
offerings as B. 53'» 553
reserved to Holy Sec .. 534
superfluous revenue .. 55
Bible, Westminster version .. 481
Birth Control, r. Contraception, Safe /Period
*Sacraments")


{QQ- 1-55»: ζ

*(References to QQ.')*


Bishop:
*episcopus benevolens*.. 564
consecration of .. 49°
live absolutions .. 615
parochial rights .. 49»
ttag ..... 487
throne 486
Blaise, St 73»
Blessings:
holy water required 588
public b. .. 355
Blind priest .. 69
Bombing:
atomic bombing, q.v.
prayer during 57»
Breach of promise .. 265
Breviary, *v.* Divine Office

Caesarean section .. 385
Cancer of *uterus* 386
Candles 732-726
beeswax .. 728
Requiem .. 752
Sanctus 728
Canon of the Mass .. 629
Canonical causes:
*angustia loci* 284
*omnia parata* 288, 289
*periculum m. civi/is* 283
untrue 282
Canons:
choir dress 5°7
capitular Mass 508
honorary .. 509
Carpet, sanctuary 719
Cassock, blessing .. 639
Castration of choristers 59-
Catechism:
origins of .. 569
parish priest teaching 521
Catechumen:
funeral 617
as sponsor 26
Cathedral parish M.C. 525
Cathcdraticum 540
Catholic Action 688
Catholic Church, membership 365
Cemetery:
municipal .. 622
non-Catholic 621
Censures:
*Ab homine* .. 200
cessation .. 457
co-operation 211
doubtfully reserved 207
general absolution 208
incurring, conditions 456
205
rc-incurrcd 206
reserved .. 207› 457
(*Off* »-îs8: **7*he Sacraminti'')

Chalice:
desecration 696
material 695
shape 695
Chant, Mass:
Benedictus 56
Communion 5°
intonation 49
Introit .. .. 49
proper..... 4»
Chapel of case, titular 685
Charts, Mass 676
Chastity 402-4»3
and marriage consent 272
parental instruction 412
Chasubles:
folded 707
Gothic 704
Chemist 4»7
Chinese rites..... 37«
Christmas:
C. Eve, double Communion IJ2
Eucharistic fast .. 14°
and Sunday' precept 99
Church (edifice) 679-688
basement hall 684
consecration, q.v.
reconciliation 68ζ
secular use 688
tombs in .. 723
Churching of women:
bad Catholic 553
non-Catholic 35=
plural ..... 354
unmarried 55»
Ciborium:
Benediction with »75
construction 697
gilding..... 69'
veil 69S
Civil marriage .. 557, 541, 4&». 517
*Codex luris Canonici,* defects 444
Collections:
box collections .. 539
bv celebrant 68
diocesan .. 558
during exposition 1S4
out-door .. 545
religious collections 545
Common error 194. 449
*Communicatio in sacris* 375--585
bridesmaid 577
funeral 37?
mayors 577
prayer in non-Catholic Church 381
principles .. 373
united prayers 374-376
Communion, minister:
dividing host I 16
deacon 118
evening 128

Communion minister:—*contd.*
before Mass ..... 127
before Requiem .. .. .. 55
during another's Mass .. .. 121
during exposition .. .. 120
self-communicating .. .. 117
server at side altar .. .. 122
voice .. .. .. .. 123
Communion cloth .. .. .. 125
Communion plate .. .. 124
Communion, recipient .. 127-138
Mass or Communion .. .. 130
non-Catholic ..... 133
precedence .. .. .. 136
sung Mass ..... 129
twice .. .. .. .. 152
women, hatless .. .. .. 154
women, cosmetics .. .. 135
Communion of the sick:
attendants ..... 158
fast ..... 146
frequency .. .. .. .. 160
paschal .. .. .. .. 166
plural ..... 157
rites 152-155
Conference Cases .. .. 505
Confession:
annual .. 225
of children .. 216
of converts 24
deaf-mutes .. 224
dispositions of penitent . 220-226
generic .. 222
for indulgences .. .. 229
before marriage .. .. 271
Confessor:
and contraception 418-420
incompetent .. 420
interrogating .. 419
obligations 215-219
*sollicitans* .. .. 420
Confirmation:
and First Communion . .. 57
register ..... .. 38
valid form .. 36
Confirmation by a Priest . .. 35
heretics present .. .. 380
privation of faculty .. 464
territorial limit .. .. 452
textual variation .. 636
*Confiteor:*
breviary .. .. 583
*Misereatur* .. 349
server .. in
Confraternities 482
of Christian Doctrine .. 370
Conopacum .. .. 665
colour .. 666
Conscience, erroneous .. 559
Conscientious objection 401
Conscription 400

Consecration of a church:
crosses .. 683
debt ..... .. 680
without altar .. 681
Contraception:
confessor .. 418-420
co-operation .. 415
good faith .. .. 418
sale of contraceptives .. 4Π
vaginal lotion .. 416
Contrition, amendment .. 220
Converts:
abjuration 21, 22
censure .. 20
confession .. 24
danger of death .. .. 458
indulgence .. 247
marriage .. .. 328
Ordinary .. .. 18
profession of faith 21, 22
reception subdelegated .. .. 19
witnesses .. .. 23
Co-operation:
in abortion .. 388
with non-Catholics .. 383
in contraception .. .. 415
in divorce .. 413
Cope, at marriages .. 709
Corpus Christi:
octave prayers .. 180
triduum .. .. 645
Cosmetics, communicants .. .. 35
Counselling lesser evil .. 421
*Credo,* standing during .. 112
Cremation .. .. 624
Crime, impediment 280, 281
Cross, sign of .. 626
at Benedicton .. 170
Crucifix:
altar 669-672
indulgences .. 240
for Stations .. 237
Custom:
servile work .. 467
superior's assent .. .. 436
Czestochowa, B.V.M. .. 691

Dancing:
Church dances .. 4ri
lawfulness .. .. 537
Deacon, touching Holy Eucharist i74
Dead, Office of .. 597
Deaf-mutes .. .. 224
Death:
apparent .. .. 253
assurance of .. 384
presumed .. .. 278
Death, danger of:
civil marriage .. 343

*(References to QQ.)*


Death, danger of:—*contd.*
dispensations .. 287
mixed marriage .. 296
Deceased clergy pact .. 83
Defamation .. 424
self-defamation .. 425
Devotions ..
May devotions .. 609
new devotions
Dialogue Mass
Dimissorials ..
Disparity of worship .. 552
Dispensations, marriage 291, 294
cessation .. 281-290
implied .. 286
Ordinary dispensing .. 30X
priest dispensing .. 492
refused 287, 290
Divine Office:
breviary lacking ..
choice of .. .. 592
choir obligation .. 589. 591
form 576, 577
morally impossible .. 588
*Pater noster* .. 593
rosary substitute .. 582
suffrages .. .. 595
trevellers .. .. 586
vernacular.. .. 590
Divine Praises .. 594
Divorce: .. 181
civil
co-operation .. 279
marriage consent .. 413
Domicile .. *73
Dominicans: 441» 442
kalcndar .. .. j6o
rite .. 46
*Dominas meus*..... .. 657
Dress, clerical
Duplicating Mass .. 84-89
Good Friday .. 604
number present 88
visiting priest .. 84
rubrics ,, 89

Eastern Church:
jurisdiction 198
marriage form
lànopic gestation .. 386
Education:
Japan 366
non-Catholic schools 567, 368
Electric lighting
Eleven o'clock Rule
Enclosure, papal
Engagement to marry 245,64?
Eucharist:
consecration doubtful 40, 42
Eucharist: *ontd.*
leavened bread 43
matter 39-4 î
renovation 45
reservation in Holy Week 602
safe custody 662
Evening Communion 128
Evening Communion, fast.. JO?
Examination, clergy 5» 437
Excommunication .. 500
*Exeat*.. 566
Exemption, regular house
Exposition:
collections during 184
communion during 120
Office of the Dead 597
Side altar candles.. 730
Ex-Religious:
ecclesiastical office 563
episcopus benevolens
Minor orders 261
Extraordinary confessor .. 200
Extreme Unction ..
h caling effect 2JO
plural

Faculties *v.* jurisdiction
Confession 188-198
of the Ordinary' .. .. 489
indulgcncing rosaries .. 453
withdrawn .. 454
Faith, danger to .. 378
Fast, Ecclesiastical .. 471-473
Fast, Eucharistic, relaxed ..
celebrant .. .. 139,144,145
induits..... 148-150
infirm people
lozenge Hi
paraffin
*per modum potus* .. I47
*per modum salivae* ,.
First Friday, votive Mass 70
Five Wounds rosary 243
Flags in churches .. 72o
Flowers 678
Font:
construction
position .. TI?
water
Foreign Missions:
indulgences
Missionary Union
*Quati-paroebus* 527
Fraud on railways . 429
Freedom of religion 360
Freedom to marry'
Freemasonry
Fundamentalism 374
*The Sacraments")*

*(References to QQf)*


Funerals 612-625
abridged rite .. 613
catechumens .. 617
heart separated .. .. 625
infants .. 618
non-Catholics 619, 620
non-Catholic cemetery .. .. 621
pall .. 57
unbaptized infants .. 623
General absolution .. 208, 217
Genuflexion at Communion .. »37
George, St..... 575» 586
Germany, form of marriage .. 310
*Gloria Patri* .. .. 627
Gloves, servers' .. 712
Gong ..... .. 718
Good Friday:
nine Fridays .. 138
M. of Presanctified .. 604
Gothic vestments .. .. 704
Gradincs 656, 660
*Gratiarum Actio* 244» 570
Graves, blessing .. 618

Hail Mary .. .. 606
Hall, in Church basement .. .. 356
Hall, Mass in .. 356
Heretics, absolution .. *210*
Holy Days:
transferred 98
travellers .. .. 97
Holy Saturday:
Communion .. 131
marriage .. .. 3
Holy Souls' Box .. 80
Holy Thursday, chalice .. 603
Holy Water:
necessity for blessings .. .. 348
paschal .. 346
Holy Week .. 598-604
Hospitals .. 248
Host, division of .. 16
Housekeepers .. 5x3
Houses, paschal blessing .. .. 348
Hunting .. 516

Ignorance of marriage impediments 27»
Illegitimacy .. 31» 480
Immodesty .. .. 409, 410, 41
Impediments, marriage 3°i-3ii
abrogated .. .. 327
non-Catholics .. 276
unbaptized .. 277
Incardination:
religious without vows .. .. 565
tonsure .. 497
Incensation:
Benediction 172
general rules .. 57
*Missa cantata* .. 47
Index, Eastern Catholics .. .. 372
Indulgences .. 155-275
conditions for 227-229
confession .. .. 229
*sede vacante* .. 485
Instrumental music .. 573
Intention:
Baptism .. .. 10
Marriage .. .. 272-274, 402,414
Mass .. 42
Internment camps, reservations .. 213
Interstices .. 498
Introit, chant .. 49
Irregularity .. 459. 462

Japan, education laws .. 366
Joseph, St:
feast transferred .. .. 690
statue design .. 690
Jubilee .. 230
Jurisdiction:
ceasing 451. 493
common error 194. 449
confessional 188-198
delegated .. .. 45°
supplied .. .. 448
territorial limit .. .. 452

King, prayer for:
maniple .. 710
obligation .. 105
termination .. 643
Knitting, servile work .. 469

Laws of the Church 445-445
children under seven .. 439
conflict between .. 437
diocesan .. .. 434
interpretation .. 433
numerical distinction .. 438
promulgation .. 434
Leakage 362» 363
Legitimacy .. 480
Leonine prayers 100-105
Litanies, anticipating 580
Litany of Loreto .. 607
Liturgy:
air raid prayers .. .. 57»
definition ..
radio .. 596
vernacular, q.v.

Loreto, litany .. 607

Maniple, prayer for the King .. 710
Marriage:
attempted .. 34»-345

*(References to QQf)*


Marriage:—*contd.*
consent .. .. 272-274,402,414
ends of .. .. .. .. 402
form 305_3'4» 3'8
impediments .. 301-311
indissolubility .. 334
intention .. .. 272-274,402,414
non-Catholic minister 34 457, 460
papal dissolution .. 335. 336
preliminaries 264-271, 414
revalidation 3-333
rites 3'5-326, 7°9
sterility .. 403
trials 334-341
before witnesses .. .. 309
Mary, B.V.M. .. 605-611
consecration of infants .» .. 610
Czestochowa .. .. 691
Immaculate Heart .. .. 605
Sorrows, feast .. .. 605
statue .. .. 690
Visitation, feast .. .. .. 605
Mass:
application, obedience .. .. 502
candles .. .. .. .. 729
capitular .. .. .. .. j08
charts ..... 676
Communion or M. .. .. 150
confession *quam primum* .. *22G*
dialogue (English) .. .. 569
dialogue (Latin)..... .....
M. in empty church .. .. 108
facing people ..... 653
*Gratiarum actio* .. .. 244,570
in hall ..... 686
in house .. .. .. .. 687
in oratories .. .. .. 465
parochial M..... 520
"pray the Mass" .. .. .. 114
prayers before and after .. 244
at sea ..... 466
server ..... 106-112
time for beginning M. .. .. 440
Master of Ceremonies, Cathedral .. 525
Matins:
anticipating .. .. 577» 578
induits for anticipating .. .. 579
second noctum .. .. .. 581
*Memoriale Rituum* .. .. $98,399
Minor Orders, ex-religious .. 261
Mission, parochial:
cross .. .. .. .. 716
frequency.. .. .. .. 522
papal blessing .. .. .. 239
*Missa Cantata* .. .. .. 47
*Missa pro populo* .. .. 7'-76
Missionary Union, faculties .. 455
Mixed Marriage .. .. 9 '-5°4
Guarantees .. .. 94-298
Monstrance:
construction .. .. .. 699
Monstrance:—*contd.*
purification .. 699
Monuments in churches .. .. 722
Mutilation .. .. 390

Natural law, marriage impediments 275
Nine Fridays and Good Friday .. 138
Non-Catholics:
absolution..
Communion
difference of worship
form of marriage..
impediments
marriage causes ..
witnesses at marriage
November Masses ..
Novitiate, admission
Nuptial blessing
forbidden ..
plural form
short form
text obscurity
widows
within sanctuary ..
Nurses and abortion

O *Salutaris* .. .. .. .. 179
Oath:
Protestant Bible.....382
priest taking oath .. .. 518
Obedience:
canonical..... .. 501
precept of bishop, Mass .. 502
Occult compensation .. 4
October devotions .. 165, 1S7
Offertory, Mass, laity's part .. 1x3
Operations, viaticum .. 162
*Oratio imperata* .. 64
*Orationel:*
Fidelium Deus .. 641
pro patre et matre .. 633
pro prelatis .. JI9
Requiem .. .. 54
termination .. 643
vernacular.. 67
Orders, Holy 256-263
days for O. .. 257
extraordinary minister .. .. 256
Ordinary .. .. 488, 489, 491, 492
faculties of O. 489, 493
marriage dispensations .. .. 303
reservations by .. .. 212
reservations "respective O" .. 2I4
Ordinary confessor .. .. '99

Pageants, vestments for .. 7'3
Pall, funeral .. .. 57


C£?J2- 1-558: *"Tie Sacraments")*

*(References to QQf)*


Palm Sunday procession .. .. 600
Panegyrics..... 612
Papal blessing .. .. 239,255
Papal enclosure ..... 555
Parents, assent to child's Baptism

Parish Priest 520-528
children in non-C schools .. 368
dispensations .. 477
installation 323» 524
jurisdiction 446, 447
precedence
rights, *v.* parochial rights
Parochial rights:
marriages.....
paschal Communion i6j
viaticum ..
Paschal Communion 164-168, 727
Passion in Holy Week:
St Mark, chronista
dispensation 601
Pastors, support of .. 530
*Pater Noster:*
Breviary .. 582
Mass
Pious associations:
faculties withdrawn 454
Missionary union 455
Pope:
discussing a future Pope 484
*sede vacante* 485
Portable altar, Mass precept 93
Preaching:
homily on Gospel 65
obligation
Precedence:
parish priest j26
receiving Holy Communion
Preface, Ordination Mass .. 258
Pregnant woman:
blessing .. 358, 574
Eucharistic fast .. *. 156
Prenuptial inquiry .. 266, 268–269
Priest:
age for priesthood .. 499
factory worker .. .. 510
first blessing 263
funeral 615, 616
prayer for .. .. 519
ordination anniversary • . 262
Privileges 443» 561
Processions, figures of saints .. 647
Profession, religious:
examination 546
formula of profession 547
by non-Catholics .. 55°
renewal refused .. 548
by seminarist 549
Profession of faith, converts
Proxy, baptismal sponsor .. J®
Pulpit

Quasi-domicile

Rabat
Radio:
liturgy ..... 596
sermons .. 378
Register:
Baptism..... Si-34
Confirmation .. 38
Marriage .. 326,333
Registrar (civil) of Marriage:
priest as registrar 325
revalidation 332
Relics:
altar stone 655
relics on the altar 673
Religious:
choir obligation .. .. 576
confessions .. 199-204, 556, 557
confessions of sick religious 202-204
correspondence .. .. 553
cx-rcligious, minor orders .. 261
last sacraments .. .. 254
leave of absence ..
maternity work .. 558
profession
Requiem Mass:
antipendium 675
Asperges before ..
candles 732
cemetery chapel ..
formula 53
Communion before 55
Introit
*orationes* 54
in oratories
Reserved cases 205-214
Restitution:
to poor ..... 431
small thefts 430
Retreat, clergy 503
Rites, Congregation 445
Rosary:
additions .. 242
beads ..... 608
for Divine Office 595
indulgences 241
Sunday choice 608
Roses, blessing 650
Russia, Leonine prayers 102

Sabbatinc privilege .. .. 648
Sacramcntals 346-358
Sacrarium
Sacred Heart, Mass invocations 104
Safe Period:
marriage consent 274
propaganda 423
permissible use .. 541, 542


—558: *"The Sairaments")*

*(References to QQ.)*


*Sanatio,* marriage .. .. 329-331
*sanatio* and consumption .. 331
guarantees .. 299
Sanctus candle .. 728
Scandal:
divorce..... 413
prophylactics 407
safe period 423
Schools:
attendance at non-Catholic 367, 368
united prayers 375. 376
Sea voyage:
confessions 189
duplication, Mass 87
Mass 466
meaning defined .. 190
Seal of confession .. 218
Self-defamation 96
Seminar}' and seminarist:
rector's faculties .. 188
Orders application *59
entering religion .. 549
Server:
Communion
gloves
incensing at Benediction
at Mass 106-112
non-Catholic .. 59
Servile work:
custom .. 467
excuses .. 468
knitting .. .. 469
profit motive .. 467
Sex .. 402-413
*parvitas materiae* .. .. 406
instruction, parental
Sick and infirm:
Communion of, q.v.
care of .. 249
religious .. 202-204
Sign of Cross:
formula 626
at Benediction 170
blessings .. 35°
Simony:
chalice . 696
occult • 535
blessed objects . 701
Sin, dangers and occasions . 408
Sinners, public
Sponsor, baptismal:
catechumen 26
number .. 29
public sinner .. 27
proxy .. 30
touching candidate 28
Stations of the Cross 233-237
Statues 689-694
design 689, 690
erection or removal .. 689
Statues:—*eontd.*
on tabernacle
plurality .. .. 692
Sterilization .. .. 391
Stipends, Mass 77-82
Stole, preaching . · 708
Stole fees .. 536
Subdeacon substitute
Sunday: amusements 470
children .. 95, 96
military Mass 94
oratories 90-92
servile work, q.v.
Superior, religious:
duration .. 5JT
political direction 554
Supply priest:
at marriage 306
Mass *pro populo* ..
Suspension:
faculties whilst under suspension 197
theatre suspension .. 4Û3

Tabernacle .. 659–666
construction .. 659
conopaeum 665, 666
fixture .. 660
interior .. 664
key .. 661
position •. 663
statue on tabernacle .. 694
throne .. 667
Tampax .. 408
*Te Drum* .. 628
Teresa, St, roses • · 650
Thabor .. 668
Theatre, suspension • · 463
Theft:
grave matter . · 428
railway frauds .. 429
restitution 43θ. 431
Theology, for Ordination . .. 260
Throne, bishop .. 4S6
Throne, Blessed Sacrament
construction . · 667
electric light
Time, computation:
choir matins
private matins 578
Mass ..... 440
Titular:
*A Curtetis*..... 611
of altar 356
chapel of case 68 j
Tonsure, incardination 497
Travellers:
censures ..
holy days 97
divine office J9O
jurisdiction 4Jo


(j2j2- 1-358: *"Tbe Sacraments")*

*(Referencess to QQ)*


Tribunal, sentence .. .. 483
*Triplex machina* .. .. 638

Vaginal lotion .. 4'6
pad, tampax .. 408
Venereal disease, prophylactics .. 4°7
Vernacular, liturgy:
baptism 3
divine office .. 594
exposition .. .. 646
Mass .. 569
scripture .. .. .. 66
various .. 568
Vessels, sacred 695-702
Vestments .. 7°3"7'3
blessing .. .. 705
double .. .. 706
Gothic .. 704
at marriages .. 709
at pageants .. 7'3
Viaticum:
obligation.. .. .. 189
operations.. .. 162
parochial right .. .. 163
twice in one day .. .. 162
Vicar-Capitular .. 494
Vicar-General:
two v.g..... ..495
military .. 496

l 'icarius *co-operator* (curate):
blessing vestments .. .. 703
marriages .. .. .. .. 305
dispensing .....478
*Vicarius oeconomus,* salary .. .. 541
Vocations, religious, advertising .. 544
Voice, administering Communion 123
Votive Mass:
blind priest .. .. .. 69
first Friday .. .. .. 70
Requiem, q.v.
Vows:
baptismal .. .. .. ..16
private .. .. .. .. 550
religious profession .. 546-548

War:
bombing .. .. 399
conscientious objection .. .. 401
early Church .. 394
faculties during .. '92, 453
military objectives .. 397
principles .. 393. 395, 396
reprisals .. .. 398
Widows, nuptial blessing .. .. 320
Women: cosmetics, Communion .. 134
devout sex .. 6ti
hatless Communion .. 134
military life .. 363
on Sanctuary 3'9, 604
Writing, clerical licence .. 506


(j2J2· ï-358: "*The Sacraments")*